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CANAL OPERATION UNDER 1977 TREATY—PART 2

HEARINGS
BEFORE THE
SUBCOMMITTEE ON THE PANAMA CANAL
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
H.R. 111, H.R. 454, H.R. 1511, H.R. 1716,
H.R. 1958, H.R. 2522

PROVIDING A BASIS FOR THE EFFICIENT OPERATION OF THE PANAMA CANAL AND PROVIDING FOR THE RIGHTS AND RESPONSIBILITIES OF THE UNITED STATES UNDER THE 1977 TREATIES BETWEEN THE UNITED STATES AND PANAMA

FEBRUARY 14, 15, 26, 28; MARCH 7, 13, 14, 1979—WASHINGTON, D.C.
FEBRUARY 23, 24, 1979—BALBOA, CANAL ZONE

Serial No. 96–2

Printed for the use of the Committee on Merchant Marine and Fisheries

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CANAL OPERATION UNDER 1977 TREATY

MONDAY, FEBRUARY 26, 1979

House of Representatives,
Subcommittee on the Panama Canal,
Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2261, Rayburn House Office Building, Hon. Carroll Hubbard, (chairman of the subcommittee) presiding.

Present: Representatives Hubbard, Lowry, Bonior, Bauman, Carney, Wyatt, Murphy (ex officio), and Hansen.

Staff present: Ernest J. Corrado, chief counsel; Carl L. Perian, chief of staff; Kenneth Merin, minority counsel; Kai Midboe, minority counsel; W. Merrill Whitman, consultant; Bernard Tannenbaum, special counsel; Terrence W. Modglin, staff director; Kenneth Fendley, professional staff member; and Anita C. Brown, clerk.

The Chairman. The committee will come to order. If Ambassador Moss and the subcommittee members will indulge me just a moment, I think it is crucial that some important points which have arisen in the last few days be included in the record.

There are new developments which have come to light at the field hearings held in the Canal Zone this past Friday and Saturday and in the meetings and briefings our delegation had with Panamanian Government officials. Let me make a few general comments on the findings of our field hearings and inspection visit, which I think was a very successful one from the point of view of ascertaining the opinions of elements in the Canal Zone and Panama with respect to the legislation before us.

Our visit to Panama, which I was privileged to lead, could not have been so productive had it not been for the courtesies extended by Governor Parfitt, General McAuliffe, President Royo, the Panama Canal Authority, and Ambassador Gabriel Lewis, and we certainly extend our thanks to them for the arrangements that they made.

The three sets of hearings Friday and Saturday were the chief reason for our visit to Panama. The hearings allowed us to go into some issues, such as canal finances and levels of tolls, in much greater depth. Other issues, such as the precise level of benefits that should be enjoyed by canal workers, the future status of present employees, and the problems of the transition period, were introduced in detail in the subcommittee's hearings for the first time.

I believe there were some common understandings in the minds of many members of the visiting delegation at the conclusion of our visit yesterday.

First, we now more clearly understand the need to deal with the implementing legislation as soon as possible, so that the employees of the canal will have adequate time to determine their futures and so that all of the physical and organizational changes caused by the new treaty can be achieved. And this committee will act expeditiously.

We also recognize in a clearer way the critical nature of the 30-month transition period specified by article XI of the treaty. This is the period which will require the closest kind of cooperation between the United States and Panama. The good faith and trust of both governments are at stake in the transition period, which will span about one-eighth, the first eighth, of the duration of the treaty.

Third, while we see that the financial benefits for canal employees are important in the substance of the implementing legislation, we also know that those now living in the zone, both United States and Panamanian, have a real fear about the deterioration of the quality of life in the canal area.

Residents there have serious doubts about the physical security of their families, a good educational system, decent housing, and career mobility in their work. They fear all of these will be lost. The prospective Canal Commission, and the Congress through implementing legislation, must do all that can be done to maintain the quality of services and life now found there.

In the final analysis, however, the terms drawn in the Panama Canal Treaty mean that the citizens of the government of Panama will have much to do with whether or not skilled employees remain on the isthmus or whether or not we have an efficient canal.

This brings me to the last, and perhaps most important, matter arising from our trip. Some members of the delegation that visited the canal, including members who will play a major role in the shaping of the implementing legislation, became quite concerned that some of the key understandings that underlie the Panama Canal treaty are now in shambles.

Last year when the treaty debates were ongoing in the Senate, numerous amendments and reservations were turned back only by strong assertions that Panama and the United States had clear understandings of the meanings of certain provisions. Now we are hearing from some representatives of the Panamanian Government that these understandings do not exist.

If this is the case, at worst, there may, in fact, be no true treaty agreement to implement. At best, there will be a need to clarify the terms of the treaty in the implementing legislation. The terms will have to be drawn in a fashion that will allow no possible misinterpretation by Panama as to the intent of the United States, and in a way that will deny the executive branch the ability to conclude new terms with Panama that might be detrimental to U.S. interests.

In many senses, the Panama Canal Treaty that has been concluded between the United States and Panama is an incomplete document, even with the implementing agreements. The treaty is an agreement to agree in more detail. It was intended that it be supplemented by other agreements of varying levels.

It is going to prove virtually impossible to arrive at other agreements or to do a good job in writing implementing legislation unless the basic terms of agreement are clear. Interpretations that violate not just the spirit but even the letter of the treaty, such as the demand for personal property not intended to be transferred to Panama, the demand for the payment of back taxes for a decade by organizations doing business in the Canal Zone—we were assured it would put many private enterprises out of business immediately if that were to go forward—and the upgrading of facilities not used for 20 years, imply that we really do not have an agreement at all.

In general, then, the field hearings and visits to the isthmus demonstrated the vital need to carefully write the implementing legislation. It also showed how much the understandings, or misunderstandings, between the United States and Panama are related to this legislation.

Ambassador Moss, we are certainly privileged to have you here with us this morning. We appreciate the courtesy that you extended to the Committee in Panama this weekend, and we hope to clarify, or at least set clearly forward, the basic misunderstandings that clearly were pointed out to every member of this Subcommittee.

The subcommittee, in toto, was completely aware of the difficulties. If you will take the stand, we certainly would appreciate hearing from you.

STATEMENT OF HON. AMBLER H. MOSS, JR., U.S. AMBASSADOR TO THE REPUBLIC OF PANAMA, U.S. DEPARTMENT OF STATE

Ambassador Moss. Thank you very much, Mr. Chairman and members of the subcommittee. I appreciate very much this opportunity to meet with you to discuss the proposed implementing legislation for the Panama Canal Treaty.

I have a prepared opening statement which I will now proceed to read before I will be available for the questions on the matters you raised, sir.

At present, in addition to its traditional diplomatic and consular tasks, the American Embassy in Panama is actively engaged, in close coordination with the Governor of the Canal Zone and the Commander-in-Chief of the U.S. Southern Command, in planning for the implementation of the Panama Canal Treaty, which comes into effect this October 1.

Previous executive branch witnesses before this subcommittee have covered a number of aspects of the draft versions of implementing legislation under consideration by the committee. There are two aspects in particular I would like to address this morning which are of special concern to the embassy.

These are, first of all, our overall objective in building a partnership with Panama in the canal enterprise, designed to maintain a safe and efficient canal; and, second of all, the need to safeguard the interests of American citizens in the present Canal Zone whose lives will be affected by the implementing legislation.

First, I would like to make a few observations to the subcommittee about the cooperation I have observed thus far between the United States and Panama. Although there is a great deal of work to be done between now and October 1, and there are obviously a tremendous number of difficult decisions to be made by the United States and Panama individually as well as together, the cooperation between our Government and the Panamanian Government has been excellent.

The treaties are a mutual obligation to which both sides are committed, and in that spirit the work being done by both countries' planners to date represents an honest effort to complete the arrangements called for under the treaty.

We are fortunate in that many of the leaders of the Panamanian Government today were heavily involved in the treaty process over the last few years and are therefore extremely knowledgeable. President Aristides Royo, a young lawyer who became President of Panama last October 11, was a chief treaty negotiator for Panama. He has shown a particular sensitivity toward the needs and concerns of the United States citizens who live in the Canal Zone and who work on the canal.

President Royo has visited both the Atlantic and Pacific sides of the Canal Zone where he has met with American and Panamanian citizens who work there. As a gesture of goodwill, he recorded a television message in English to the American residents of the Canal Zone which was broadcast on the local Armed Forces television stations.

Ambassador Gabriel Lewis, a businessman who was Panamanian Ambassador to Washington during the treaty ratification process, returned to the private sector shortly after approval of the treaties, but now has come back to the Panamanian Government as Ambassador-at-Large and as the head of the Panama Canal Authority, the Panamanian organization which has responsibility for all planning for treaty implementation.

He has a strong team working with him in this effort, including three cabinet ministers, two top military officers, and a number of economists, lawyers, and other advisers, many of whom have earned university and post-graduate degrees in the United States. Panama has sent as its new Ambassador-designate to the United States, Carlos Lopez-Guevara, a distinguished international jurist, who holds a law degree from Harvard.

As Governor Parfitt has reported to you, numerous working subcommittees made up of representatives from our two countries have been working together since mid-1978 to plan for the implementation of the treaty in a wide range of subjects from operation transfers, such as the ports and railroads, to areas of employee and community interests, including personnel, housing, social security, utilities, the environment, and police and fire protection. Similar binational committees have recently begun work in areas of concern to our Southern Command and the Panamanian National Guard.

The goodwill and businesslike attitude which exists between our two countries is exemplified by the fact, as Deputy Secretary Christopher has already observed, that last month we signed three agreements with Panama which were called for under the new treaty relationship. We have thus dispatched those portions of work in a very timely manner. The first of these accords was a new civil aviation agreement, which provides for the phasing over of our present air traffic control in Panama's air space to Panama over a 5-year period. During that time, we will be training Panamanian traffic controllers to begin replacing our personnel and also training Panamanian technicians in the use and maintenance of the equipment. The FAA agreement will represent a considerable cost savings to the United States.

The second agreement provides for a permanent United States cemetery at the present Corozal Cemetery in the Canal Zone, over which our flag will fly and which will be administered by the American Battle Monuments Commission in the same way that our military cemeteries abroad are maintained.

The third of these agreements is a prisoner exchange treaty, which will be submitted to the Senate for ratification, which provides that American citizens convicted of a crime in Panama can elect to serve their sentences in the United States and Panamanians convicted of a crime by a U.S. court can serve in their homeland.

It is apparent that we are already beginning to realize the benefits of our new partnership with Panama in the military field. During the last 2 months, conventional warfare exercises have been held by our 193d Infantry Brigade at the Rio Hato military base in cooperation with the Panamanian National Guard. This military area, large in size and ideal in terrain for such exercises, is deep into Panama's interior and would not have been made available to use except under the new treaty relationship. On February 16, I accompanied President Royo on a visit to the U.S. Army School of the Americas. President Royo, who was given full military honors on his arrival, stated in a press conference at the school that he wished it to continue in operation after the present 5-year agreement expires, and encouraged the beginning of talks between the United States and Panamanian representatives for that purpose. He has remarked to me that he is proud of the fact that there have been numerous Panamanian graduates of the school, and he hopes for greater Panamanian participation in it.

The foregoing remarks are background observations leading me to the first point I wanted to make about the committee's consideration of implementing legislation. The new Panama Canal Treaty was designed to create a working relationship between the United States and Panama in the operation and defense of the canal, so that it would remain efficient and secure in the future.

It is important that implementing legislation support the concept of partnership with Panama for two essential reasons. First, during the period of our stewardship of the canal operation until the year 2000, there will be continuous need for full cooperation between both governments in numerous respects, and the canal's operation will necessarily be affected by the degree to which that exists. The United States has a dual mission with regard to canal operation: to keep it functioning efficiently and securely, as it has in the past, but also to bring Panamanians into all levels of its management so that they will be perfectly prepared to operate the canal after the year 2000.

Although the treaty clearly puts the United States in control of the canal operation, that operation will function most efficiently if both sides regard it as a partnership. That will require an additional ingredient in addition to simple compliance with the treaty's terms. That element is the willingness of both sides to approach the task in a spirit of collegiality. We see that spirit developing on the isthmus today, in the detailed work being accomplished by technical experts of both countries, and implementing legislation can help promote that spirit by giving life to the new institutions which will take effect under the treaty.

The principal new institution is the Panama Canal Commission itself. In my view, it is of great importance to follow the administration's proposal that the Commission be constituted as a government corporation, subject, as is the present Company, to the continuing oversight by the Congress of its activities and budget. This form would best provide for a close working relationship between both countries in the manner contemplated by the treaties. A government corporation would not only assure continuity in the canal's operation, but it would also be instrumental in bringing Panama's minority representatives on the Board of Directors of the Commission into a genuine decisionmaking forum on policy matters. In this way, over a period of years, Panamanians would develop a tremendous expertise and appreciation for the extremely intricate problems of managing canal operations, because they would share in the process of making important managerial decisions. They would also share responsibility for them.

In this respect, I would also like to point out that one of the principal concerns frequently expressed by Members of the Congress has been whether or not Panama would, after the year 2000, appreciate the need for adequate maintenance and capital improvement of the canal operation. I believe that a corporate structure would best convey the concept that the canal be operated as a business, on a self-sustaining basis, and that proper provisions for maintenance be made in its financial structure. Indeed, since much of the business of the board of the Government corporation would involve approval of canal maintenance programs, Panamanian members would be personally involved and would share responsibility for the upkeep of the canal.

Anyone who is familiar with Panama knows that the country has a large number of highly qualified people, a great many of them with university degrees from the United States. It is important, however, that Panamanian personnel be given the opportunity to work as closely as possible with their U.S. counterparts in all aspects of canal management so that the institutional knowledge that we have concerning the canal's operation can be transmitted to them well in advance of the year 2000.

My second point involves safeguarding the interests of U.S. citizens. Mr. Chairman, both the administration bill and the bill introduced by yourself contain numerous provisions relating to the employment and to the quality of life of the U.S. citizens who are presently living in the Canal Zone. Governor Parfitt has given extensive testimony on this subject to the Post Office and Civil Service Committee. I wish to associate myself with the Governor's testimony. During the 4 months since my appointment as Ambassador, I have had the opportunity to meet with numerous citizens' organizations and the labor unions in the Canal Zone, and I can attest to the fact that our citizens living there, although the great majority of them did not favor the treaties, have a high esprit de corps, love their work on the canal, and wish to stay if the terms and conditions of their employment and the quality of life in their communities remain similar to those which they enjoy today.

Many of them are apprehensive about the future, generally for two reasons. First, of course, they want to be assured of Panama's goodwill and sensitivity toward their concerns. Our Embassy, along with the Panama Canal Company and the U.S. Southern Command, is very mindful of this concern, as are the representatives of the Government of Panama. But, a second reason for their concern is the notion that Washington, by which they mean both the executive and legislative branches, may no longer care about them and may not provide for them in the ways promised in the treaties. In this respect, the provisions in both the administration's and the chairman's bills are of critical importance. It is in the best interest of the continued efficiency of the canal that these loyal employees and citizens be treated fairly, in recognition of the significant role they play today as well as the valuable contributions they have made in the past.

I should also add that we are asking our employees to undertake an additional, and highly essential, mission: that of training Panamanians to assume increasingly greater responsibility in the canal organization. Many Americans in the Canal Zone with whom I have spoken are very much aware of this extra requirement and respond to the challenge with understanding and goodwill. We need their continued support, and I feel it is in our highest national interest to enact the provisions made for the employees of the canal enterprise which are contained in the administration's proposed implementing legislation.

In conclusion, Mr. Chairman, let me say that I believe there is every reason to be optimistic about the success of our cooperation with Panama in treaty implementations. Our Panamanian counterparts have shown their desire for a spirit of partnership in our great common enterprise. A new government in Panama took office last October which is composed of young, energetic, highly-educated people who are determined to make their country an economic and social success. They have expressed a policy of vigorous stimulation of the private sector and have extended an open invitation to private foreign investment. An important part of their program is continued cooperation with the United States in every area. They have demonstrated sensitivity to the concerns of the American citizens who live in the present Canal Zone, and have repeatedly stressed their desire for our citizens to remain in Panama after they retire. If we are able to implement both the spirit and letter of the treaties with respect to Panama and to our own employees, and if we can help maintain between both countries a true spirit of collegiality, we will assure that the Panama Canal will continue to provide its important service to our country and to world shipping.

Thank you, Mr. Chairman, and I will be able to answer any questions that you and members of your committee may have.

The Chairman. Thank you, Mr. Ambassador. We appreciate your very forthright statement.

If the committee were looking for a spirit of collegiality on its visit to Panama, I am sure it would have recognized it. At the briefing by the Panama Canal Authority, there was anything but a spirit of collegiality. In fact, I found the attitude of the chairman quite demeaning to the committee, particularly where he referred to the United States once again as the big boy on the block and asked how would we look in the eyes of the world if we did not put the Coco Solo Navy Base back in 100-percent operating condition.

Now, this is a base that was abandoned 25 years ago. It has had no relationship to the operation for the canal at any time, other than its defense during a World War II-Korean war period.

Now, where is the spirit of cooperation, let alone collegiality? The clear understanding was the United States would turn the canal over in operating condition. It was clear to us, from Governor Parfitt and the entire staff and operational people in the canal Zone that we are, in effect, upgrading existing functions for the operation of the canal. Then we come along and hear a demand for a 25-year-old Navy area to be put back in A–1 condition. You were sitting on one side of them, and I was sitting on the other when the statement was made, and I would appreciate your responding to that attitude.

Ambassador Moss. Mr. Chairman, I will respond to that. Certainly, the Director General of the Panama Canal Authority did raise this point. I am not going to present a brief in favor of everything he said there. I think other Panamanians have recognized that a demand to upgrade the Coco Solo facilities, which were abandoned many, many years ago and were precisely in the same state of repair when the treaty was negotiated as they are today, is one, frankly, without foundation.

The point that he said he was trying to make was simply that if there were some old and abandoned buildings, that we had, perhaps, a problem together, in that we want the best possible appearance put on the transition period when the treaty comes into effect on October 1.

Nonetheless, I will say that the Panamanian Government has recognized in many ways the fine job that the Canal Company has done in maintaining the present facilities. Before your visit to the isthmus, in fact, an article published in the Panama Canal Spillway, the Panama Canal Company newspaper, on the subject of maintenance was reproduced in all Panamanian newspapers and had very favorable editorial comment from the Government-controlled press.

So I think that whereas you are seeing one manifestation on the part of the Director General about one particular set of facilities that concerned him, there is at the same time a general recognition on the part of the Government of Panama that the company is doing a superb job and is absolutely above reproach in all respects in maintaining the canal facilities that are going to be turned over, such as the bridge, for instance, in which new paving sections have just been completed; such as the railroad, in which there is a great capital and maintenance improvement program going forward even though the railroad is going to be transferred.

I believe that throughout the Panamanian Government such recognition does exist. I would, however, share your view that the remarks we heard were an aberration from that general spirit, and an unfortunate one.

The CHAIRMAN. What I drew in addition to the fact that it was an almost total abrogation of prior understandings was an attitude that Ambassador Moss and Governor Parfitt, if they do not give in to any tantrum that is thrown by that Authority, will just be end-run up here in Washington and "we will get what we want up here."

Now, do you have that attitude, or do you pick that up from those meetings?

Ambassador MOSS. No, sir, I do not. The plan has been worked out where at least a survey of the condition of buildings will be made. This is not to say that we plan to—that anyone plans to upgrade facilities to improve the state of repair that they were in when the treaties were signed or that they are in at present. But at least to show whether there is any real basis for any concern, I know the Governor is planning right now to have a survey taken to show what condition buildings are in, just by way of information. I think that may lay to rest a lot of the apprehensions.

From time to time in Panama, there have been feelings that, we would allow buildings to deteriorate or that we would carry material off. I think the article in Spillway which I mentioned laid to rest in the minds of most Panamanians this particular question, because the evidence is totally to the contrary.

The CHAIRMAN. Well, let us leave a couple of million dollars item and go to a $200 million item, the issue of the contingent payment to Panama, article XIII, 4(c) of the treaty.

Is it not true that State Department officials said repeatedly last year that the contingent payment to Panama did not have to be in the tolls base, and this was understood by Panama?

Ambassador MOSS. That is correct, Mr. Chairman.

The CHAIRMAN. Is it not further the case that Planning Minister Barletta of Panama stated in San Francisco last year that Panama recognized the contingent $10 million payment as just that, contingent on a surplus and not on the tolls base?

Ambassador MOSS. That is correct, Mr. Chairman, and Planning Minister Barletta was the Panamanian who negotiated that portion of the treaty.

The CHAIRMAN. Well, why do we now have new interpretations by Panama, by people who participated in the negotiation of the treaty, to the effect that they must achieve the $10 million each year?

Ambassador MOSS. Let me say, Mr. Chairman, that it should be entirely clear between Panama and the United States that the United States does not have the obligation in any way to build into the toll base the article XIII, 4(c) contingent $10 million payment. This is not only reflected in the statements of Planning Minister Barletta, but in the understandings attached by the Senate to the treaty which were expressly accepted last June by Panama in the instruments of ratification.

I will say, just by way of explanation, that the opinion that you and your committee were given in its session with the Panama

Canal Authority was made, to be sure, by an official of the Panamanian Government. That means it has to be taken seriously. Nevertheless, he stated that the opinion that was being given was his own and it was not an official government position. That is not to say that it need not be taken seriously. The fact is that it was made by a Panamanian government official, and therefore I understand your concern.

The CHAIRMAN. You can understand the concern of the American taxpayer.

Ambassador Moss. As a legal matter, Mr. Chairman, I would say that we consider this matter to have been definitely settled in an understanding to the treaty which was added by the Senate and which were expressly accepted by the Government of Panama.

The CHAIRMAN. A supposedly responsible official of the Panamanian Government brought it up to our hearing, and they specifically requested that we come over for that briefing and hearing. And I would think that it was a planned, stated fact for us to take back with us and perhaps to accede to that and change the previous understanding.

Ambassador Moss. Well, all I can say, Mr. Chairman, is that certainly, as far as I know, it is in no way the intention of the executive branch to make any concessions on that point. I think it is well settled in the understanding to the treaty; it is well settled in the negotiating history, and we certainly plan to make no concessions on that point.

I understand the concern of the committee, in that such a statement was made, even if not as an official Panamanian Government position, by an official of the Panama Canal Authority. All I can say is that I will try to see that this matter is resolved and put to rest to your satisfaction and to that of the committee.

The CHAIRMAN. This committee would like a clear statement prior to the time we mark up legislation as to the understanding of the Panamanian Government on that specific point.

Ambassador Moss. I will take that message back with me.

The CHAIRMAN. We expect to mark up the third week in March.

Ambassador Moss. I can appreciate that concern, Mr. Chairman, and that will be, I think, an important message for me to carry back.

[The following was submitted for the record:]

DEPARTMENT OF STATE,
Washington, D.C., March 21, 1979.

Hon. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee

Hon. CARROLL HUBBARD,
Chairman, Panama Canal Subcommittee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMEN: During the hearing held before the Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries on February 26, 1979, I was asked a number of questions by yourselves and other Members and was requested to provide the Subcommittee with answers for the record.

The principal issues about which the Members expressed concern were a statement made by the Director General of the Panama Canal Authority during the Subcommittee's trip to Panama to the effect that the United States should refurbish some old buildings in the Canal Zone prior to their transfer to Panama, and statements made on the same occasion by another official of the Authority to the effect that Canal tolls should be set to include the contingent payment of ten million dollars annually under Article XIII 4(c) of the Panama Canal Treaty and that the Government of Panama had the right after October 1, 1979, to tax businesses in the Canal Zone on their operations prior to that date.

With regard to the first point, I have discussed this matter thoroughly with Ambassador Gabriel Lewis, Director General of the Panama Canal Authority. He states that he did not say, and that it was never his intention to imply, that the United States had any obligation to upgrade the condition of buildings beyond their state of repair at the time of the signing of the Treaty. He did urge that the United States give some of the buildings a 'face lifting' by repairing broken windows and by painting, to provide a better image for the U.S. when the Treaty comes into effect. He also acknowledged that some buildings, abandoned for a great many years, were beyond repair and might best be demolished. As I stated in my testimony before the Subcommittee, surveys are being made to catalogue the buildings and their condition prior to transfer to Panama, but there is no obligation on the part of the United States to repair or refurbish buildings in the Zone.

With regard to the other matters, I testified that the statements made by an official of the Panama Canal Authority had never been represented to me as positions of the Government of Panama, and that I did not believe them to be such. In order to obtain clarification of these issues in the form of an official response, I sent the following diplomatic note to the Foreign Minister of Panama:

PANAMA, *March 21, 1979.*

> EXCELLENCY:
>
> I have the honor to refer to the Panama Canal Treaty and related agreements signed September 7, 1977, and which will enter into force on October 1, 1979. I wish to confirm the understanding of my Government that, in accordance with Article IX of that Treaty and Paragraph 1 of the Annex thereto, the laws of the Republic of Panama shall apply throughout all of its territory upon the entry into force of that Treaty. Therefore, except as specifically provided in that Treaty and related agreements, all business and non-profit organizations currently established in that portion of the territory of the Republic of Panama which constitutes the Canal Zone shall be subject to the fiscal jurisdiction of the Republic of Panama as of October 1, 1979, and thereafter, including during the 30-month transition period established in that Article.
>
> Furthermore, Paragraph 1 Article IX of that Treaty establishes the principle that the laws of the Republic of Panama shall apply to matters and events which occurred in the Canal Zone prior to October 1, 1979, only to the extent specifically provided in prior Treaties or Agreements. Therefore, it is the understanding of my Government that after October 1, 1979, your Government will not collect taxes or other charges or impose sanctions on such businesses or organizations related to their activities or operations or other matters or events occurring in the Canal Zone prior to October 1, 1979.
>
> I also have the honor to refer to Paragraph 4(c) of Article XIII of the Panama Canal Treaty and to the instruments of ratification thereto. That Article provides, in part, that the Panama Canal Commission will pay to your Government out of Canal operating revenues a sum of up to ten million dollars per year to the extent that such revenues exceed its expenditures. It is the understanding of my Government that your Government accepts that the United States need not sell toll rates for the Canal at levels designed to produce revenues to cover such payment.
>
> However, my Government will ensure that a notation concerning the provisions of Article XIII 4(c) will be made in each annual budget for the Panama Canal Commission.
>
> If the foregoing accords with the understanding of your Government, I shall be grateful to have an acknowledgement from your Excellency.
>
> Accept, Excellency, the renewed assurances of my highest consideration.

I have received the following response from the Minister:

> DEAR AMBASSADOR:
>
> I have the honor to acknowledge the receipt of Your Excellency's note of today's date which states as follows:
>
> "Text"
>
> I have the honor to confirm that the foregoing accords with the understanding of my Government."
>
> (Complimentary close)
>
> (FOREIGN MINISTER).

Thus, we have received a satisfactory assurance from the Government of Panama that there is no difference in our respective views as to the meaning or application of Article XIII 4(c) and Article IX, Paragraph 1, of the Panama Canal Treaty.

The remaining information which I promised for the record of the hearings of the Subcommittee will be transmitted directly by the Department of State.

Sincerely,

AMBLER H. MOSS, Jr.,
Ambassador.

The CHAIRMAN. On the matter of retroactive taxation of businesses now operating in the Canal Zone, is it not clear to the Department of State that article IX, paragraph 1 of the Panama Canal Treaty precludes any retroactive assessment such as the type we heard about Saturday from Mr. Manfredo?

Ambassador MOSS. That is the position of the Department of State, Mr. Chairman. In fact, it was precisely consideration of the protection of these businesses which led us to the inclusion of that paragraph in the treaties. We consider that that matter is settled, and article IX, paragraph 1 would specifically preclude the taxation of Canal Zone businesses on their business activities prior to October 1.

The CHAIRMAN. The treaty clearly says: "The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this treaty only to the extent specifically provided in prior treaties and agreements."

Ambassador MOSS. Again, Mr. Chairman, I might say just by word of explanation, not by word of excuse, that the fiscal authority of Panama, that is the fiscal jurisdiction over Canal Zone enterprises, has been a matter of contention between the United States and Panama during the whole history under the 1903 treaty. Panama has always claimed the right to tax those businesses. We were anxious, of course, in the treaty negotiations that that right not be recognized, or at least that provision be made, as it is made in the treaty, that this matter need never be litigated but be made moot by inclusion of such a provision in the treaty.

I think it may represent simply the desire of perhaps some elements within the Government of Panama not to give up on the point, but as far as the executive branch, is concerned, it is settled; the matter is absolutely clear and is settled in the treaty.

[Whereupon, Mr. Hubbard assumed the Chair.]

The CHAIRMAN. Well, I would appreciate your communicating to the Government of Panama that it would be virtually impossible for this committee to write legislation with the misinterpretations, and the changes of such a stark nature, such as those that I have just discussed—on the upgrading of unnecessary and outdated property, on the article XIII contingency fund payments, on the taxation issue. If issues that we felt had already been clearly resolved are now subject to change, it is going to be very difficult for any committee to properly write implementation legislation. We would like the answers to those questions and an assurance, somehow, on the part of that government that they are going to be acting in this spirit of collegiality that we have heard about this morning, or certainly in some spirit of good faith.

Mr. HUBBARD. Mr. Bonior?

Mr. BONIOR. Thank you, Mr. Chairman.

Mr. Ambassador, I have not followed these proceedings to the extent perhaps that others have over the last 2 years, although since becoming a member of this subcommittee, I have felt, obviously, an obligation to make myself aware of the issues involved as best I could.

I, in my brief journey to Panama, was impressed with the spirit of collegiality. I had the feeling—and I am reluctant to draw the analogy because of a former President who often uses the analogy—of a football team marching down the field, but I had the feeling that we have gone, 90 yards, starting at our goal line, and we are just about ready to punch the ball in, if you will. Many of the important questions, certainly, have been settled with the treaty, and we are at a point, it seems to me, in which both countries, both entities are concerned about getting the maximum that is left in terms of negotiations.

While I can understand well the concerns of the American people and members of this committee concerning the issue of a contingency payment and I can understand the questions that were raised by members of this committee on retroactive taxes, I think I can also understand the feelings of members of the Panamanian Government about some statements that have been issued recently by Members of the Congress. I can understand, I think, their feelings, perhaps, concerning the confirmation of Panamanians to the Commission. I think, as Americans, we would be incensed if we were in their position, to have Americans confirmed by Panamanians.

I can understand their concern about the toll structure and some of the things we are about to consider, and I also can understand the whole question of how they will have to relate to the potential problems of, for instance, hydroelectric power and the cost to Zonians versus the cost to Panamanians.

So it seems to me what we have here is a question of—we are right there, pretty close; we have an October deadline. And it would seem incumbent upon this Government and the Panamanian Government to continue to work in that spirit of collegiality that you often mention in your statement to resolve these issues that have been brought up by both sides. The difficult part, it seems to me, is that we are under a time constraint to write implementing legislation, and it seems important to this member that we understand from President Royo, from former Ambassador Lewis, and other members of the Panamanian Government what is it that they are requesting of us, in addition to what we have, indeed, already requested of them in our latest trip.

I have no questions, Mr. Chairman. If the Ambassador would like to comment, I would enjoy hearing from him.

Ambassador Moss. Mr. Chairman, if I just may make a comment on Congressman Bonior's statement, I think that he has pinpointed with great sensitivity the fact that building a partnership under the present circumstances does take a certain amount of work and a certain amount of goodwill on both sides and, of course, the reason is because we have had a relationship of a different sort over the past 75 years. It has often led to disputes and we have not always been on the friendliest of terms. And, of course, what we are faced with now is the requirement, under a terribly short time constraint, and to try hard to lay aside all the old differences as well as the tendency to try to catch up and grab extra advantages, which, frankly, has been manifested through the years on both sides, and to work in a truly cooperative manner. That means, in many cases, setting aside old habits and adopting new habits, new mental attitudes, new approaches. It is something that does not always happen overnight, given the past history of the relations between the two countries.

But I think, as Congressman Bonior correctly observed, the spirit is there, the willingness is there, and the appreciation is there that a partnership is certainly the best way to work in the future. I think that we will see from time to time little aberrations from what would be a perfectly smooth functioning partnership. These are explainable, but I think these are aberrations, and in the main, the building of our partnership is proceeding very well.

Mr. BONIOR. I have no further questions or comments, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Bonior. Congressman Bill Carney?

Mr. CARNEY. Mr. Ambassador, with all due respect to you and your position, I feel as though I was not in Panama for the last few days, but in another country, because I did not at any time feel that there was a spirit as you have discussed between the two nations, and certainly—and this was a great concern that I have had—I did not feel that there was an esprit de corps of the American citizens; in fact, they are quite confused, quite concerned, and they brought out the point that there has been an accident increase rate of 96 percent in fiscal year 1978 because of the lack of esprit de corps, because of the concern that they have for their well-being and the concern that they have for their status. I think that was the feeling of the Panamanians who work for us at the canal. I think that we certainly have a great deal of difference of opinion as to the way you read the situation and as to the way I have in the last three days, and I think the Panamanian Government certainly has a difference of opinion as to the way we read the treaty and the way they do.

I know the Chairman asked the four questions that I was most interested in hearing, and I am sure that you will provide us with that information. I would feel it impossible to formulate legislation without getting the answers that we need on those questions, particularly title XIII, chapter (c) on the $10 million. That is a considerable amount of money, and Mr. Manfredo did say that they would expect the United States to make up any deficits in any years. That could be over $200 million, as the chairman pointed out.

Gabriel Lewis indicated that they will levy back taxes. And I have a request of you, if I could—I would like to obtain a list, as well as the amount of tax that will be levied, and to which corporations they will do that. The Ambassador, Mr. Lewis, indicated that he had that information; it was not made available to us. I would like to get that list before we go too much further.

Of course, once again, the chairman mentioned the improvements of some of our properties there. He did mention that they have been considered properties of no use to the American Government and they have deteriorated, but now the Panamanian Government feels, "for the good will of the United States," that we should spend millions of dollars to make them look good.

Movable properties, is another question that I have; I have some grave concern about movable properties. On February 2, there was an order calling for the movement of some movable assets that the Navy had. We are not talking about the Panama Canal Company; we are talking about the Navy. They had an entire list of lathes and machinery that they used to repair the naval fleet, and that list on market values today was in excess of $100 million. It is true that the value, the book value was $15 million, but the replacement value was in excess of $100 million. On February 9, the Navy canceled that order.

I would like to know if the State Department was involved at all with that decision to cancel that order to move that property. I think that is important before we go much further.

I have to say, after reading this statement, that I did not find any sense of cooperation between the Panamanian Government and the American Government down there. I could not let your statement be read without my making my personal observations entirely to the contrary.

The CHAIRMAN. Would the gentleman yield?

Mr. CARNEY. Yes, Mr. Chairman.

The CHAIRMAN. On the question of overall assistance to Panama, your very capable staff briefed us early Friday morning and Mr. Culbertson, the AID Director, discussed the level of aid to Panama over the past years and over the years to come, and it is our understanding that Panama was either number one or, at the very most, number three on the list as far as total payments and aid assistance is concerned, particularly in the areas of housing, sanitation, and schooling.

That is another reason that we find this misinterpretation—and trying, in effect, to gouge the zone for so much more—irritating and it just points up what Congressman Carney just brought out.

Thank you.

Mr. CARNEY. In the hearings that we had, the Panamanian nationals who worked for the Canal Zone expressed a concern about their well-being, particularly the West Indians, the black Panamanians of West Indian origin. They expressed particularly that they felt that there were poor relationships between the Panamanian Government and their group.

It was also brought out that Panamanians in general who enjoy the benefits of working in the Canal Zone, the economic benefits of working in the Canal Zone, were somewhat concerned about their acceptance back into the normal economy of Panama, both from their economic well-being and from their social well-being. I think there is an underlying fear, and I think more from their social well-being than from their economic well-being.

I was wondering if you could answer or perhaps speak on the human rights and civil rights issue of Panama. Specifically, we are talking about a group of people who have worked for the canal and have done a good job over the years; they are quite concerned. There is a report from the Organization of American States on human rights in Panama. Certainly, it is the administration's policy not to favor countries that do not live up to our ideals of human rights, and that report certainly would not say that Panama does live up to these ideals.

Can you give me your opinion on that particular issue, specifically related to the West Indians who are working for the Canal Zone?

Ambassador Moss. Certainly, Mr. Chairman, I would like to respond to Congressman Carney's question and also to a few other points that you made, Mr. Chairman.

Let me start with the West Indians. A fairly large West Indian population came to the canal during the time of its construction and worked there. They came from islands such as Jamaica and various other parts of the Caribbean, lived by and large within the Canal Zone, continued to speak English, and continued to hold their own community values. Actually, up until a few years ago, the only available education provided for them was in the English language, so they were kept, really, as a community apart from Spanish-speaking Panamanians.

Now, of course, they never acquired anything other than Panamanian nationality at birth; they did not acquire U.S. nationality. So they were virtually in a position in many cases, of being Panamanians, who did not speak the language of the country and who, in most cases, did not belong to the majority religion of the country and therefore were culturally separate.

They have been, I think quite rightly, concerned about their future under the treaties, because they have not assimilated into Panama's social structure. And for that reason, out of sensitivity to the particular problems and concerns of this group, we have included in implementing legislation a special immigration provision whereby they could quite freely migrate to the United States on liberal terms.

We do not know at this point and we do not have any hard evidence as to whether or not their concerns are justified, but just given the sociological background that I have described to you, I think there is certainly ample explanation as to why they feel that they are a people apart and do not know where they will come down into the social structure when it sorts itself out after October 1. I hope that provision for special immigration rules will allay some of their fears. That is an escape route if they feel that there is too much pressure on them to assimilate or there is discrimination against them because they have not, and that may meet some of their concerns. We do not have any accurate notion at the moment as to how many of them will take advantage of the special immigration provisions; we have not been able to get any kind of reasonable idea, but I think we will as the months go by. I certainly think that those special immigration provisions are very important; they would let a number of the people affected into the United States, as I say, on rather liberal terms when you consider our normal immigration laws, and I think those provisions ought to be passed.

Moving on to the concerns of employees generally, I understand perfectly what you mean and what you must have heard by way of concerns expressed by employees both American and Panamanian. I think the basis of their concerns in most cases arises from uncertainty. They know exactly what their life is like now, what their benefits are, what their working conditions are, the quality of life, how they interact socially with the rest of the people in their communities, and they are not so sure of what comes later. In many respects, of course, the Panamanian employees who express their concerns over labor conditions are expressing the same concerns that Panamanian and American employees are expressing over our labor conditions. In many cases, our executive branch has not fully defined the labor rules, wage rates, and benefits. A number of citizens are still worried about that.

I think as time goes on and as we work within our own Government and Panama works within its own government to try to define what the rules of the game are and come up with the answers and make it all clear, and as the two governments work together to settle some of these crucial problems—I think the big ones really are in the labor area—that the people's concerns will be allayed.

Now, I would say that I think that the Panamanian Government has understood with great sensitivity the concerns about the American population in the Canal Zone, as to that aspect of the quality of life that bothers them about the disappearance of the zone—namely, the prospect of Panamanian policemen coming through their neighborhoods. Panama is taking steps to insure that there will be joint patrols and that special training is given to Panamanian policemen. I think they are very aware of it. Panamanian Government leaders have said publicly that they want the Americans who live and work in the Canal Zone to stay there; they want to make conditions right for them so that they do not feel they have to leave and so that they do not feel put upon.

I think it is very important to our official government representatives down there—the Governor, the commanding general, and myself—to keep following that problem and to keep making sure that those things get done. But I would say that I have seen considerable evidence of Panamanian sensitivity about that.

On the human rights situation generally, you may have seen the Department of State's latest human rights report on Panama. I think it shows a steady improvement in the human rights area; certainly in the core elements of human rights—freedom from torture, arbitrary arrest, and things like that—Panama comes out rather well in the Latin American spectrum. The whole picture, I think, generally is gradually improving in the human rights area, and we hope that it will continue to do so; we obviously urge and support that.

Amnesty International just published its 1978 report, and once again, it does not even list Panama in the listing of the countries that the report covers. That is not to say that people are not going to have some human rights complaints in Panama, as they do in practically every country, including our own, but I think there has been a notable improvement.

Let me address finally the question of the Navy property that you mentioned, because I think I ought to just say that I have not heard about this before; I have no knowledge of any decision which was made to move property or that it was scheduled to be moved. To my knowledge, if such a decision was made, there was, to the best of my knowledge, no State Department and certainly no Embassy role in the reversing of such a decision. However, I will promise to look into that, Mr. Chairman and Congressman Carney, and try to get you an answer and find out what that is all about.

Mr. CARNEY. Mr. Chairman, I have a list of that naval property and the orders to remove it and the orders rescinding the movement of that property 6 days later. My question that I would like to have answered is, with these two sets of orders, has there been any State Department intervention?

Ambassador MOSS. I will get that answer, as I say, Mr. Chairman. To my knowledge, there has been none, nor on the part of the Embassy. Of course, I spent 4 years as a naval officer and I know that the Navy can change its mind on occasion about things. But I will look into the particulars of this case to the best I can.

[The following material was submitted for the record:]

DEPARTMENT OF STATE,
Washington, D.C., April 5, 1979.

Hon. CARROLL HUBBARD,
Chairman, Panama Canal Subcommittee,
House of Representatives, Washington, D.C.

Hon. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D.C.

DEAR MESSRS. CHAIRMEN: In his letter of March 21 Ambassador Ambler H. Moss provided you with answers to a number of questions asked of him during his February 26, 1979, testimony before the Panama Canal Subcommittee of the Merchant Marine and Fisheries Committee. He noted that the Department of State would be replying to other questions on his behalf.

During the hearing Congressman William Carney of New York asked whether there had been any involvement by the Department of State or the Embassy in a reported February 9 decision by the United States Navy not to remove certain Navy equipment from the Canal Zone. The Ambassador testified that to the best of his knowledge there had been no involvement in the February 9 decision, and certainly no Embassy role in it. The Ambassador is correct: neither the Department of State nor the Embassy was involved in the decision which was made by the United States Navy. It is my understanding that the Department of the Navy will be communicating directly with you on this matter.

In connection with Chairman Murphy's request to the Ambassador for a statement of the Governor of Panama's interpretation of the Panama Canal Treaty with regard to tax claims by Panama against organizations in the Canal Zone, Congressman Carney requested a list of the organizations involved and the amount of the tax being levied. I am pleased to note in this regard that the Panamanian Foreign Minister confirmed our understanding on March 21 that, under the Panama Canal Treaty, Panama will not collect taxes or other charges or impose sanctions against businesses or organizations operating in the Canal Zone for their activities prior to October 1, 1979.

Congressman Carney also asked for information concerning the amount of revenue being gained or lost as a result of the transfer of commercial and retail activities from the Canal enterprise to Panama under the Treaty. We have been informed by the Panama Canal Company that there is no significant gain or loss to the Canal resulting from the transfer of such activities to Panama. According to the Company, the activities of such a group generally have operated at a break even level, generating annual revenues and expenditures in the neighborhood of $60 million.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for
Congressional Relations.

Mr. CARNEY. There is no doubt about the ability of the Navy to change its mind.

I would also like to point out that the West Indians, or the Panamanians that do not live in the Canal Zone will not enjoy those immigration rights, although they work for the Canal Zone governments or for the Panama Canal Company; if they live in Panama, they will not have that same enjoyment. They are the ones who expressed some fear for their civil and human rights.

You brought out an interesting point on the issue of utilizing the Guardia Nacional and our police department in the next 30 months. Well, some of the members of the police department expressed a fear—in fact, one in particular expressed a fear for his life with this cooperation, and he was somewhat concerned about it. Would you like to make any comment on that, as to what we will do to protect the West Indians who cannot enjoy those immigration benefits and the members of our Canal Zone Police Department who feel that they could really be in a precarious situation?

Ambassador Moss. Certainly, Congressman Carney. First of all, on the immigration question, the West Indians who have served a certain number of years with the Company will be eligible even if they live outside of the Canal Zone.

Mr. CARNEY. How many years?

Ambassador Moss. I believe that is 15 years; those retired from the service now, or currently having 15 years of service. Now, that will include a lot of them that live in Panama. There may be some who retired or left the Company and did not complete that time of service, but we figure that this type of provision would include most of them and would include most of the group which would be most concerned, which is quite often the older part of the population.

Mr. CARNEY. But those with less than 15 years of service do not enjoy that immigration provision?

Ambassador Moss. That is correct. On the other hand, remember that these are not U.S. citizens—this is something we are doing for people who have been our employees. We are not talking about U.S. citizens here that we are trying to protect; these are foreign nationals. We are trying to be as generous with them as we possibly can, given the fact that they have been loyal employees of the Company.

Mr. CARNEY. I appreciate that.

Ambassador Moss. And it is really on the basis of their employment with the Company and with our organizations that we drafted these special immigration provisions, not simply because they are a different population within the country of Panama that we feel sorry for.

Mr. CARNEY. I appreciate that. I think that when you have a segment of the population that lives outside of the Canal Zone and have worked between 60 days, let us say, and 15 years, and they are concerned, I think that the U.S. Government should be concerned for their welfare, whether they worked for 2 days or 25 years in that situation.

I would like to know how we are going to protect those particular people.

Ambassador Moss. Congressman Carney, the only way to do so would be, as we are proposing, through legislation, because I think that probably the immigration provisions on the books now might be a bit difficult to comply with, and therefore only by further liberalizing the present administration bill or H.R. 111 would that be possible.

Mr. CARNEY. Thank you.

Mr. HUBBARD. Thank you, Congressman Carney.

Ambassador Moss, would you tell us exactly, please, what role the U.S. Embassy in Panama plays in the coordination of planning for treaty implementation?

Ambassador Moss. Certainly, Mr. Chairman. That is a complicated question. Of course, down on the isthmus, we really have three principal government organizations at work, in addition to the numerous departments and agencies who have set up shop there in the last 70 years.

We have, principally, the Panama Canal Company and Canal Zone Government, headed by Governor Parfitt; the Southern Command, headed by the Commander-in-Chief, General McAuliffe; and myself, as Ambassador.

We meet together in the forum known as the PRC, the Panama Review Committee, and generally review at all stages matters of common concern in carrying out Government policy and planning for implementation.

On the civilian side, the primary agency at work sorting out all these problems is a group now called the Binational Working Group, composed of about 26 subcommittees which work in ports, the railroads, boundaries, surveys, nonprofit organizations—a range of technical subjects—in which are represented Panamanians, Panama Canal Company officials, and a member of the Embassy in each case. So we coordinate in that manner.

On the military side, a series of subcommittees has been set up strictly, at the moment, on a military-to-military basis, with our officers and officers of the National Guard, and they have not advanced quite so far in their planning stage as has the Binational Working Group set of subcommittees.

Those subcommittees, as I mentioned, have been actively engaged since the middle of last year, and that is a good sign that they have started. Of course, they have spent a lot of time just drawing up plans, identifying problems, and getting going.

I think all of us are quite aware—sometimes painfully aware—of the fact that there are only approximately 32 weeks left until treaty day and a lot of work is yet to be done. But I think that all of the work that is being done in these subcommittees is being done on a very professional basis by people sitting down as technical experts, looking at what the problems are, and trying to figure out solutions to them. Of course, there are many problems.

I am very satisfied with that method of operating; I think it is a good way of coordinating. We just simply have to accelerate the work as we come down to the deadline.

Mr. HUBBARD. In how many planning subcommittees is the Embassy involved?

Ambassador Moss. We are involved in all 26 of these subcommittees, and what we have done, really, is not to set up a treaty planning unit in the Embassy, but really to consider the entire Embassy as one big treaty implementation planning team to work with Pan Canal and Southcom. That is the only way we can do it.

We would not be able to have enough people to work on the problem if we had just one little office within the Embassy.

So we constituted the entire Embassy, including AID, to work on the problem and to cooperate in the subcommittees. We have got somebody assigned to each of them to cooperate with our counterparts in Pan Canal and Southcom.

Mr. HUBBARD. Mr. Ambassador, discussion of the embassy's role in planning brings to mind the sections in H.R. 111 and H.R. 1716 concerning the authority of the Ambassador. The language of section 109 of the Murphy bill, of which I am a cosponsor, differs slightly from section 102 of the administration bill.

Do you have any comments on the provision applying to the U.S. Ambassador?

Ambassador MOSS. Mr. Chairman, I think they are roughly similar; let me see if I can find the page there. I just might have a couple of comments.

The administration bill says: "The ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements,"; that same provision in H.R. 111 says: "The ambassador of the United States to the Republic of Panama shall coordinate with the Republic of Panama."

I think that the administration bill is a bit broader, because it says the Ambassador "shall have full responsibility for the coordination," which I think implies coordination not just with the Republic of Panama, but with the other U.S. Government agencies on the isthmus, such as the Panama Canal Company and Southcom.

I think it is important to stress that idea, that coordination has to take place among our U.S. Government partners down there, as well as between the Embassy and the Republic of Panama. I think in that sense, though, that may be a small distinction, but I think the provisions are roughly similar.

Mr. HUBBARD. I might say, Ambassador Moss, that many of the members of the subcommittee are happy to see the emphasis you have placed in your prepared statement on protecting our citizens in the present Canal Zone.

Too often, the Department of State seems to be representing, at times, the foreign country, not our own people. Do you see any difference in this situation?

Ambassador MOSS. Well, I think there is something that we have to be very mindful of, Mr. Chairman, and that is that the jurisdiction of the United States over the Canal Zone will disappear on the October 1, and there are thousands of U.S. citizens over there who need and want the Embassy to be involved with their problems and concerned with their lives. And, moreover, I think in the interest of overall efficiency of the operation, we simply have to be concerned with their lives, not only for humanitarian reasons, but as a practical matter, because it leads very directly to the efficiency of the operation and defense of the canal.

So I think it is not only in the national interest, for the reason of protecting and safeguarding the interests of our citizens, but also, additionally, for providing for a smoother canal operation, that we be concerned with all of their problems. And, as I say, we have to do that in a very coordinated way with our other Government agencies, and, I think, the Embassy definitely has a role in this respect. The citizens there need to be represented and feel represented by us.

Mr. HUBBARD. Thank you, Ambassador Moss. I call on Congressman Lowry from the State of Washington.

Mr. LOWRY. Thank you, Mr Chairman. Mr. Ambassador, the other members have stressed those important points that we are concerned about—the costs; it looks like perhaps some changes and differences in interpretation from those things that our Nation and Panama have entered into in good faith.

I am confident in your ability to represent those very important interests that we are all concerned with during the negotiations going those last 10 yards that Congressman Bonior has referred to.

I would like to ask a broader question. How important to the United States, in your opinion, is a stable and friendly nation to the United States in that part of the world?

Ambassador MOSS. Congressman Lowry, I have worked on Latin American affairs for some time, both in public and private life, and I feel it is absolutely crucial. I think that Panama is a country that has very much of an orientation toward us. It welcomes our private corporations to come in and set up business.

Panamanians come to our colleges and universities; they have institutions they borrow from us, such as Lions Clubs, Rotary Clubs, Kiwanis Clubs. This is the type of friend we need to maintain and cultivate. I think that the pro-American attitude which is generally apparent on the part of most Panamanians is something that works very much in our favor in Latin America, and I think that this new relationship will encourage it.

I think, also, it is very much in our national interest to see Panama overcome its economic difficulties. I think this can be done through trade and cooperation and through private foreign investment, principally, and I think it is very much in our national interest to wish them well and help in a friendly and noninterfering way in their efforts to expand their economy and to be prosperous.

I think all these things are terribly important, and you are absolutely right about that.

Mr. LOWRY. Is it going to be possible in the future, 5 or 10 years from now, for there to be a stable democracy in operation in Panama that will realize the interests of private enterprise and free enterprise and the importance of that within our hemisphere and within our world?

Ambassador MOSS. I hope very much that there is. The United States certainly should encourage this trend. As you may know, the Panamanian Government has adopted certain moves toward greater participation in the legislative process and toward direct popular election of the President by 1984.

At the same time, the Panamanian Government has, in fact, laid much more stress, since I have been there and since the new government came into power last October 11, on development of the private sector and working with the private sector in trying to create a better business climate.

These are all very encouraging signs. One does not like to make any predictions, with the world economy being in the shape it is in, but I think the trends certainly are encouraging and we shall do everything we can in the proper way to encourage these trends.

Mr. LOWRY. What is your estimate of the costs of the implementation of this change we are going through? What is the annual and the overall cost?

Ambassador MOSS. I am not an expert on the question of the full treaty costs. I know that during testimony during the Senate ratification process last year, in a letter from Secretaries Vance, Brown, and Alexander, the overall figure of $350 million during the lifetime of the treaty was mentioned. I think that figure, as do all figures in government and private life, has to be revised from time to time, and I think that it is probably under revision right now.

I am not aware of any different figure at this moment, but I think that it probably will be revised, one way or another. As for how that breaks down into annual costs, of course some of the costs will impact most in the next couple of years during the transition period—items such as military construction. I do not have a complete annual breakdown. I think we have to come up with a better revised figure for the total treaty cost package before we can estimate exactly where those costs would fall.

Mr. LOWRY. How important would you consider those estimated costs of, say, $350 million over the life of the treaty in comparison to having a friendly neighbor in that part of the world?

Ambassador MOSS. I think, Congressman Lowry, it is obviously an important sum of money; it is a large sum of money. At the same time, I consider it a good investment, because I think it will pay off rather handsomely in terms of our safeguarding our interests in the canal, its operation and defense, and in terms of everything we are trying to do in Latin America to protect our interests in the free world generally.

So, I think that, generally speaking, it is money that represents an investment that we can see a future return on.

Mr. LOWRY. Do you recall the amount of money we spent a day in Vietnam?

Ambassador MOSS. I do not have that figure, sir.

Mr. LOWRY. It would be 12 days.

Ambassador MOSS. Twelve days' worth?

Mr. LOWRY. Yes; thank you.

I felt that that attitude of our people in Panama was excellent. As a newcomer that really benefited from that trip, I thought the attitudes were excellent. I also concur—and I do not want to distract from it—I concurred with the amount of concern of the other members of this committee on those particular points that they have gone through on having to renovate those old bases, and costs that were clearly not within the good faith negotiations of this Nation.

We expect you to do that job, and we think you can. I think we are entering into a very positive situation there.

Ambassador MOSS. Thank you, sir.

Mr. LOWRY. Thank you.

Ambassador Moss. Thank you, also, for your comment that we had moved 90 yards. I would have said somewhat less than that, but I appreciate the comment.

Mr. Bonior. As long as we do not have any end runs.

Ambassador Moss. Right.

Mr. Hubbard. Before we call on Congressman Bauman who has just come in—we will give him time to collect his thoughts—we will call on Congressman Joe Wyatt, a member of our full committee, whom we are glad to have with us today in the subcommittee's hearings.

Mr. Wyatt. Ambassador, the Chairman, pointed out a couple of things that he would like to see answered. One thing he mentioned in particular was the question of the electricity situation. Do you think we could get some clarification from the Republic of Panama in that regard, because I think that has a lot to do with the apparent costs to some of the nonprofit corporations that are in there, as well as the overall lifestyle of people, both American and Panamanian, who live there?

Ambassador Moss. Yes, Congressman Wyatt, that is an important question; it is one that is being worked out within the context of this Binational Working Group, in one of the committees. I think it needs attention, because, of course, there is a great disparity in electricity costs—the cost of electricity presently being furnished not only to American citizens who live in the Canal Zone, but also to nonprofit organizations such as churches.

I hope we can come up with a satisfactory resolution. We certainly regard it as a significant problem, because it is one of those many elements which goes into the quality-of-life situation. If too many of those are out of kilter with peoples' expectations, then there is a perception that the quality of life is not going very well. So I think all these things need detailed attention.

Mr. Wyatt. Also, as I understand it, employees would lose the privileges of purchasing from the company store. Is this by treaty that they are going to lose these rights?

Ambassador Moss. Yes, sir, that is correct; that is in accordance with the treaty arrangement. This was a provision which the Government of Panama sought in the treaty arrangements, I think for reasons of adding to their economy. It is in accordance with the treaty.

Mr. Wyatt. The Government of Panama is the one that wanted those particular provisions?

Ambassador Moss. That is correct.

Mr. Wyatt. Third, could you give us some reason why there could have been, during the last several days when the committee was in Panama, differences that you got from the Panamanian leadership, versus what the treaty may say?

I agree with the chairman; I think there are some real problems. I can see very little reason for us to go down there again to joust; this is a committee of the U.S. Congress. These feelings were not strongly held by not just the individuals who testified, or the visitors, but by various people in the Government of Panama itself. This is a general question.

Ambassador Moss. As I mentioned, I feel that the positions which you heard at the end of the briefing session with the

Panama Canal Authority, which were certainly surprising to the members of the committee—and, frankly, surprising to myself—expressed, as the speaker mentioned, his own opinion, and possibly the opinion of certain elements within the Panama Government, but not an official government position.

Nonetheless, they obviously have to be taken seriously, because he is, undeniably, an official of the Panamanian Government and of the Panama Canal Authority. So, as I mentioned to the chairman—and the chairman's message to me certainly was that they are matters that have to be cleared up, simply because of the way in which they were brought up.

I think it is an important distinction, however, to say that these were not official positions adopted by the Government of the Republic of Panama, nor, in fact, by individuals who had direct personal knowledge of those particular clauses of the treaty because they negotiated them.

But, nonetheless, I recognize their importance and the effect that such statements had on the members of the committee that heard them.

Mr. WYATT. Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. Mr. Ambassador, you disappoint me, because I fully understood that you were going to laugh if you made the statement that you just made before this committee. I think, if I heard you correctly, that the statements made to us by the officials of the Panama Canal Authority—all of them Panamanian Government officials—did not necessarily represent the official position of their government, is that correct? Did you say that?

Ambassador Moss. That is correct.

Mr. BAUMAN. And you did not laugh.

Ambassador Moss. I made a correct statement. In fact, the speaker himself said that; he said they represented his personal opinion. I think that later he added that there were some people in the Panamanian Government who felt that way and that they were working on an official position paper.

That is not to say that I am claiming he made those remarks as a private citizen because, of course, when he is an official of the Government and stands before the members of the committee and makes a statement of this sort, these, of course, are not the remarks of a private citizen. I am not trying to make that case. I am only trying to put into context the way in which the statements were made and, more precisely, where they fit into official positions.

Mr. BAUMAN. Mr. Chairman, I regret that I did not get here earlier this morning. I would almost think, if I didn't know better, that the State Department was in charge of the weather and the traffic between here and Easton, Md.

It is not as though I have not discussed this matter with Ambassador Moss extensively in the last 4 days, because I have on numerous occasions and he has been very courteous to me. But I do want to state for the record, since I was not here earlier, that those of us who oppose these treaties in the House of Representatives and were disposed to deal with this implementing legislation in a manner that would try and salvage, as we view it, the best possible case for the United States now have very serious doubts about whether we want to even bother with the implementing legislation; whether or not it might not be better, as I said yesterday in Panama, to seek some constitutional means to either repeal or to oppose these treaties completely, by whatever method is available to us.

Certainly, there is still a dispute about the House's right under article IV to dispose of property. Unless these questions are cleared up—and I gather from the briefing from staff, since I did miss your statement, many of the points that were raised by the Panama Canal Authority remain to be clarified and that report will be referred to this committee. Is that correct, Mr Ambassador?

Ambassador Moss. That is correct. The chairman requested, and I promised to do my best, to produce a satisfactory response for the members of the committee so that these matters which were raised during the course of that briefing would be clear in the committee's mind.

Mr. BAUMAN. I think that is essential, because it is incredible to me that in all these negotiations, you could serve as many months as you have dealing directly with the Panamanians—and then a congressional committee, who luckily happened to meet with these Panamanian officials on what we are now told is an unofficial or informal basis—and give us interpretations that are not only diametrically opposed to your understanding and our understanding, but to the treaty's specific terms.

That was confirmed to us by Governor Parfitt in our debriefing session. There is no right of the Panamanians to apply, retroactively, their laws, tax, criminal, or otherwise. There is no right for them to take our movable property which is not needed for the operation of the canal. There is no right for the Panamanians to demand that we renovate dilapidated property. There is a right to remove a property, such as the locomotive that became such an emotional issue last week in Panama.

Now, if we cannot deal on a basis of understanding at this point, I do not know when we can. I would restate my own view, at least from this one member's finding, that what we saw in Panama was the basis for this Congress, if it is to act on implementing legislation, to adopt the strongest possible legislation to curtail the power not only of the Panamanians to misinterpret, but the power of the State Department and others in the administration who appear to be, at many points, not on the side of the position that many of us, at least, in the Congress hold.

I think it is unfortunate that we have come this far to a juncture where we have to write this legislation and have not resolved these issues. So I do hope that your guarantee of a full explanation will be given to this committee, and I also want to thank you for your many courtesies to me extended through the time that I stayed there.

Mr. Chairman, I have had so many questions asked and answered during the last 4 days, I do not think I need to ask any more and I thank you for your indulgence.

Mr. HUBBARD. Thank you, Congressman Bauman, for your comments.

Are there any other questions, counsel?

Mr. CORRADO. Yes.

Mr. HUBBARD. Mr. Ernest Corrado, counsel for the committee; go ahead.

Mr. CORRADO. Thank you.

Ambassador, as I understand it, the only drydock for thousands of miles around where the gates of the locks can be repaired is at Balboa, and I understand that this goes over to the Panamanians on October 1. If this is so, and I understand it is, it is a critical facility and it seems that there are some political-based questions, if I could ask a few, with respect to this situation.

Do we have any assurances from the Panamanians that they will allow the gates to be repaired there, and what will we do if they will not? What recourse do we have in the event of a refusal? Is there any protection for us in the treaty with respect to this?

Have there been any discussions with the Panamanians regarding the costs to be assessed for repairs when we float the gate down to the drydock? Are there any assurances in the treaty or from the Panamanians, or otherwise, that the costs for the repairs will not be exorbitant?

Has the Embassy taken any actions with the Panamanians to prepare them to take over this facility? Lastly, have there been any discussions or any preparation for training the Panamanian employees who will run this facility?

Obviously, the reason I ask all of these things is, if the gate cannot be repaired for any of the reasons that I mentioned, it is obvious that the facility will not function. For the record, could we hear whether there has been any work done on this and whether we have any assurances that this will all function smoothly.

Ambassador MOSS. Well, Mr. Corrado, I certainly think that both sides recognize the tremendous importance of having the facility to overhaul our lockgates. They go through periodic overhauls, and I think a complete overhaul something like, I think, every 25 years, where they are completely taken apart and put back together again. That is an essential part of the operation of the canal.

As for the specific discussions with the Panamanians of the future of that maintenance and of the training of personnel, I am not an expert on that subject. I believe they have been taking place within the context of the discussions with the Panama Canal Company, because I know that on a number of technical levels and I believe that drydocks is one of them, Panamanian observers have been brought in and they are beginning to be apprised of the problem and of the nature of the work that is going to have to take place.

I am not aware of any specific discussions between the Panama Canal Company and the Government of Panama at this point as per the costs involved in drydock lock gate overhaul. I think it is a matter of great interest to both governments.

Certainly, I believe that one place in which that question would be addressed, of course, will be in the board of directors of the new Commission, which will have a minority membership of Panamanians. So, in a way, the Panamanians will be sitting on both sides of the table. They will be negotiating the price for the overhaul of the lock gates; at the same time, other Panamanian interests, possibly private interests, may be negotiating the price of that overhaul.

I am sorry that I am not an expert on the fine points and the details of the work that has progressed to date in discussing that particular subject. I do feel, however, that both sides recognize it as an important one, and one that certainly has to be dealt with, because it is one of the essential functions of the operation of the canal. It is not one in which the Embassy has played a principal part. I think that is going to be worked more through the Panama Canal Company and the Binational Working Group, but it is one where we have an obvious interest.

Mr. CORRADO. With respect to the water situation, is it not true that most of the water sources and the backwaters will be under Panamanian jurisdiction after October 1, and have there been any agreements or any discussions with respect to the control of the mosquito?

Ambassador MOSS. On water resources, there have been some significant developments that have taken place. One of the big problems in the Canal Zone and the adjacent areas of the watershed which are now in the Republic of Panama has been the progressive deforestation over the years.

If you see aerial charts of the 1950's down to the present, on both sides, in the zone and out of the zone, you will notice a considerable amount of deforestation. That, of course, has to be halted and, in fact, turned around and areas reforested, if the proper amount of rainfall is to continue to be available to the canal. We need 52 million gallons of fresh water for each ship transit, so it is very, very essential for the operation of the canal.

In that respect, work has been going forward on the creation of an environmental committee which will include American and Panamanian representatives. And even before that time, we are taking steps with the Government of Panama, through a new AID watershed management loan, to provide some loans to try to start the reforesting process again.

I think there is a tremendous amount of sensitivity on the Panamanian side and, of course, Panama has a stake in the tonnage that goes through the canal in that that is the principal source of their payments under article XIII of the treaty. So I think there is a great awareness on both sides, and actually plans in action which will attack the water problem and which will insure that the deforestation which has been devastating the isthmus can be turned around, and that proper care of the environment can be taken.

On the Panamanian side, they have plans in some of the areas you mentioned that fall back under Panamanian control in creating protection of the national park reserve, increasing enormously the amount of land included under national park protection right now.

So I think there is awareness of the essential value in protecting the watershed and, in fact, even improving it from its present state.

In the area of mosquito and pest control, of course this is one of the great historic features of why the canal was originally successful—the conquering of disease. The Panamanians have been trained progressively through the years, and through their ministry of health, have had a very good mosquito control project within their own territory.

I recall that sitting in my office one day, Panamanian Ministry of Health inspectors came in with funny-looking apparatus and asked if they could check my office for mosquitoes. This was obviously something learned through the long development by us, originally, and the work of Dr. Gorgas and the Americans who pioneered the sanitation of the isthmus.

I think that program seems to be going along very satisfactorily, both on our side and on theirs.

Mr. CORRADO. I understood that there has always been a constant program underway to control the mosquito, and it possibly could be a problem if, in fact, it was not under our control and it could become a health hazard again.

Ambassador MOSS. I hope that does not happen; I would not expect any reason why it should, given, I think, the recognition and the scientific capability on both sides to deal with that problem. As I say, just in my own observation, I have noticed the Panamanians doing a pretty good job on that side, too, working, as they have through the years, with our people who developed these sanitation methods.

Mr. CORRADO. One further question, Mr. Chairman, if I may.

Mr. HUBBARD. Go ahead.

Mr. CORRADO. Mr. Ambassador, we have found, from talking to the people in Panama and from our hearings over the last few days, that, in fact, it may be necessary to appropriate funds, for example, with respect to the payment of early-out pension rights. And there were a number of other areas.

Furthermore, it is conceivable that in the next few years, the tolls revenues may go down instead of going up or remaining the same because of the pipeline that might be built from Long Beach to the Midwest or because of the swap of Alaskan oil. I recall that a few years ago, we went down there and they were operating even or with a loss.

Now, if this should happen again, I do not see where all the money will come from for the 30 cents per ton, plus the several $10 million payments we have to make. When Ambassador Linowitz testified before this committee on August 17, he stated: "The Canal itself will earn the money to pay that amount to Panama. The American taxpayer will not be asked to make the payment."

Now, it is conceivable that, in fact, it may be just the opposite. Would you care to comment on this statement and this situation?

Ambassador MOSS. I would only want to comment that the treaty was negotiated and written without actually taking into account the contribution that would be made by Alaskan oil. That, of course, has been an unexpected boon that has added quite a number of millions of dollars to the canal's revenues over the last year or so.

I think the expectations are that even if a pipeline were built that would take some time and the Alaskan oil would continue to flow through the canal for at least a couple of years, which would be the highest cost years in the transition period, in operation under the treaty.

Now, no one can sit here and make an economic forecast and guarantee you that the canal will continue to be prosperous through the years. I think however, that certainly in the short run, there is not the prospect for a severe downturn in toll revenues. Indeed, I think that under the treaties, simply because of the disappearance of U.S. jurisdiction and therefore the nonapplicability of Federal minimum wage provisions in the present Canal Zone, that suggests certain areas in which costs in the future might be cut in which they are not able to be cut today.

So I think there is no reason for undue pessimism about the ability of the canal to pay for itself and to generate the revenues required. Incidentally, when the treaty was negotiated, our negotiators, in testifying before this committee and others, gave estimates varying anywhere from 25- to 40-percent increases in tolls. The present estimate, of course, is way below that, partly because of the inflow of Alaskan oil, but also through the general traffic pattern.

So I think the outlook, certainly for the period of time that we can foresee it, is one which would give rise to optimism about the economics of the canal enterprise. Of course, I do not want to pontificate about that at great length; that is not my special area of expertise. But I think that on the evidence that I have seen, we can make such a statement certainly with respect to the short run.

Mr. CORRADO. One of the things of concern is that I recall, before the treaty negotiations reached fruition, several times the Panamanians were on record in this committee as talking about a 300- to 400-percent toll increase, which I think certainly indicates their philosophy with respect to toll increases.

Now, there have been two toll increases already, and a de facto third one. The traffic just will not bear a heck of a lot more. I do not care what anybody says; it is not going to bear a heck of a lot more. You may find yourself coming and going in circles, because if there is any kind of further substantial toll increase for Panamanian payments, for example, the container operators will go land bridge in the United States.

I talked to a number of the foreign operators and they have said: "We will make other arrangements, too." I just think, aside from the Alaskan oil problem, which I realize was a boon, there is a propensity there for economic disaster, and certainly a raid on the pocketbook of the U.S. taxpayer, ultimately. That is what I personally predict will happen.

Ambassador MOSS. Well, I would only say that I think that the best guarantee now is that we have total control over the toll raises between now and the year 2000. I think what you may be primarily concerned with would be what the Panamanians would do after the year 2000.

Now, since they will be working with us for 21 years, I think they will, over that period of time, have a very good appreciation of the sensitivity of traffic to toll increases—a kind of an appreciation which perhaps was not present at the time of the early part of the negotiation of the treaties, simply because they had never been involved in studying questions such as toll sensitivity, as had been the Panama Canal Company and other agencies interested in the subject.

I think that is why the treaty scheme is a sound one, because it gives us a 20-year period, working with our colleagues in their minority representation on the Board of Directors of the Commission, to understand fully that the Canal is a very competitive business in the world of transportation; that there are other forms of transportation that compete very hard with it.

They will learn this by traveling around to different port areas, as do our Panama Canal Company people, understanding the concerns of the shippers as to possible toll increases in the future. I think that over that period of time, they should become very cost conscious and conscious of toll sensitivity as we have become over the years.

Mr. CORRADO. That will depend, I think, to some extent upon who the American representatives of the Commission are, and also the Panamanians. But I fear that somewhere along the line in the next 20 years, and even sooner, there may be a severe dislocation with respect to the tolls and the revenues. Thank you very much, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Mr. Corrado.

Is there unanimous consent that Congressman George Hansen, who has testified before our subcommittee, may ask one question?

Mr. BONIOR. Mr. Chairman, I reserve the right to object, but I will not object. I think the Congressman has been involved in this issue for a long time and has deep interest, but I just wish that that type of invitation would be given by other committees.

I have, on occasion, attempted to do the same thing in other committees and have been rejected by the chairman. It would seem to me that if a Member of the Congress has an interest in a piece of legislation and has worked on it, that, indeed, he or she should be able to ask questions and to participate.

I will not object, for that reason. But anytime the opportunity comes along where I get to make my point of view known, I certainly want to do that.

Mr. HUBBARD. You do have different types of chairmen; I agree with that. [Laughter.]

I am on the House Banking Committee and the House Merchant Marine and Fisheries Committee; I can see differences on those two committees. But, let us go ahead and allow George Hansen to ask his question.

Mr. BONIOR. Before you do, I just would like to be excused, and make the observation that I have not seen a nationalist mosquito. In fact, I have been told that most of the mosquitoes are binational in Panama. They bite with equal fervor, I understand, although I was not bitten by a mosquito in Panama, although I was bitten by other things while I was there.

Speaking of mosquitoes, I have to go over to the Alaska hearing, because we have some important legislation that we have there, so I ask your indulgence and I commend the Ambassador for his statement.

Mr. HUBBARD. We thank Congressman Dave Bonior of Michigan for being here.

Go ahead, Congressman Hansen.

Mr. Hansen. Thank you, Mr. Chairman, and I just have one short question. I do think that the point made by Congressman Bonior about committee courtesies was a good one. You and I share another committee, the Banking Committee, and perhaps we can exert whatever influence we have in extending similar privileges there and beyond.

I would like to ask you, Mr. Ambassador—I am sure the question has been asked many times, but very pointedly—you were involved in the treaty negotiations, and is it your understanding that any deficiency in tolls that would apply to payments to Panama would be made up by U.S. taxpayers?

Ambassador Moss. If I interpret the question correctly, sir——

Mr. Hansen. Any deficiency in toll income that created a shortage in payments to Panama.

Ambassador Moss. If there were insufficient toll revenues to cover the payments to Panama, then it is my understanding that they would not be owed by the U.S. taxpayer. Let us take a simple and perhaps the most extreme example. If the canal, due to an earthquake or a landslide, simply were not to function, then I would say that under the treaty there would be no money coming out of toll revenues, and therefore no article XIII payments.

Mr Hubbard. Congressman Bauman?

Mr. Bauman. I just want to make one statement while the Ambassador is still here, so that if he has any disagreement with it, he could let us know for the record. And any other of the Members who were in Panama, I would like to hear their disagreements, although Mr. Lowry and Mr. Carney are the only two.

I was given to understand that when we met with the Panama Canal Authority that they represented not only the official position of the Government, but that they had been working individually for many months with the American authorities to work out the various areas of their disagreement.

And in the specific case of the claim that Panama has now made as of last Saturday, and has not refuted, that the second $10-million contingency had to be budgeted into the tolls, that statement was made at length and in detail by Mr. Manfredo, who is rumored to be the deputy administrator under the new treaty, along with the American. Now, whether that comes about, I do not know. And it was made at the specific request of Ambassador Lewis, who is in charge of the Canal Authority on the Panamanian side.

The answer was at great length and very specific that that was their position and their understanding, and he reiterated that to me at least twice privately during the discussion; once before I asked him the question—I warned him of the question—and once after.

Now, the quality of the other answers on the other issues I have mentioned were the same, and I know that a member of your staff, after our press conference in Panama, was talking with a number of members of the press and seeking to give the same impression that you gave this morning, that the Canal Authority people were not speaking for the Government.

Now, I think they were, and until their positions are changed, we are operating in a very uncertain area that may very well influence the legislation. Now, if you wish to disagree with me, Mr. Ambassador, I wish you would now.

Ambassador Moss. Congressman Bauman, I do not wish to disagree with you; I just wish to make a bit more precise the context in which the remark was said.

The gentleman who made the statement said very specifically that that was his personal opinion, and he gave to understand that that may be the opinion of some of the elements of the Panamanian Government. But he did say very specifically that it was not the position of the Panamanian Government, as such.

I have never received any official notification, in writing or orally, that that was the position of the Panamanian Government. Nevertheless, that having been said, which I think will help to put it in the context in which the remark was made, I am not going to try to make a case that he only said it off the top of his head or as a private individual. He is a government official and therefore is responsible for what he says.

For that reason, the chairman made a very strong point this morning to me, which I take very seriously, that some word of understanding is required by the members of this committee, and I take that very seriously. But I think it is important to state precisely the context in which the remark was made because the official representations of the Government of Panama are, to the best of my knowledge, those expressed in the protocol of exchange of the instruments of ratification, in which the Panama Government very clearly and expressly accepted the reservation added to the Panama Canal Treaty by the U.S. Senate which says precisely that the article XIII payments need not be included in the toll base.

As far as I am concerned, that is the only possible legal position for that issue.

Mr. Bauman. It was late in the afternoon on Saturday and we had been holding hearings for about 7 or 8 hours, but I do not recall Mr. Manfredo qualifying his statement, saying: "This is my personal view and does not represent the Government's view."

On the contrary, when I asked him the question at the break so that he would not be surprised, he scurried around and got some consultation with Ambassador Lewis and others. The specific question I put to him was: "What is your Government's position on these tolls and this second $10 million?"

If he is going to sit before seven Members of Congress, including the chairman of this committee, and toss off a personal opinion in a delicate matter like this, it calls into question the competency of some of the people negotiating on both sides. But I await with great interest the real, true position of the Government of Panama. Thank you, Mr. Ambassador.

Mr. Hubbard. Lastly, I believe, we have a couple of questions from Mr. Bernie Tannenbaum, consultant to the full Committee on Merchant Marine and Fisheries on the subject of the Panama Canal. Then we will have our next witness.

Mr. Tannenbaum. Mr. Ambassador, it is conceivable, is it not, that the canal will be operating in the red in the foreseeable future?

Ambassador Moss. Mr. Tannenbaum, it is not my understanding that in the foreseeable future, that problem could exist. Now, no one can make any economic predictions, I do not think, about anything over a very long period of time. So, therefore, as to the long term, I would not want to say. But in the short term, from the evidence I have seen and the studies made by the Panama Canal Company and others, it is my judgment that there is no short-term risk of the canal operating in the red.

Mr. TANNENBAUM. Well, it may not be probable, but it is possible, is that correct?

Ambassador Moss. Well, I think anything in the world is possible.

Mr. TANNENBAUM. You have a canal operating with gross revenues of a little over $300 million right now. The payments to Panama alone are being increased from $2 million, some odd, to $75 million a year, and with a contingent payment, $85 million a year. That payment increases in 5 years by maybe another $25 to $50 million, so the annual payments will soon be over $100 million a year just to Panama.

Ambassador Moss. Only if the traffic increases.

Mr. TANNENBAUM. No. On the 30 cents per ton payment, there is an escalation provision built into that, and I am sure that very shortly we will be paying them well over $100 million; probably somewhere between $100 and $150 million a year just to Panama.

If we have a recession like we did in 1974 and we lose some of the grain shipments and we lose the Alaskan oil shipments, I think it is a serious problem and something we should consider.

Now, of course, you have ways of making things break even by not paying the interest payment that has historically been paid and by transferring costs to the Department of Defense, but these are really payments by the American taxpayer, are they not?

Ambassador Moss. I would also like to say that there are other posssibilities now of cutting costs which possibly do not exist under the present arrangement, simply because of the greater flexibility with regard to labor costs and contracting for services.

When, for instance, a contractor comes into the Canal Zone to perform a piece of work, he has to pay a minimum of $2.90 an hour, when the minimum wage in Panama is 60 cents. This is true for any work done in the Canal Zone by anyone, whether it is by a Canal Zone enterprise or a Panamanian enterprise coming in.

So I just say that by way of suggestion that there are ways of cutting costs that may be even more flexible in the future than at present. I think that, certainly, one would first turn to cutting costs. Raising toll rates, of course, is another way.

We had reckoned, in negotiating the treaties, that toll increases of somewhere in the neighborhood of 30 percent were what we budgeted for. As a result, of course, of the favorable economic situation, if we were not to continue the interest payments, the toll raise would be about half that amount.

Sensitivity studies have shown that you could increase the tolls by somewhere between 75 to 100 percent without a fall off in revenue, so that there is flexibility built in. That is why I think that, certainly for the foreseeable future, unless there were a world economic disaster that hit very suddenly, it is hard to see that the canal would be faced with a deficit operation over the short term.

As I say, I am not an economic expert and do not want to hold myself out as one, but over the short term, just from the evidence I have seen, that would not be the case.

Mr. Tannenbaum. The only difference I have with you there is that I think the sensitivity studies which said between 75 and 100 percent preceded our previous increases of almost 50 percent.

Also, on the question of lowering of the wage base for the Panamanians, you are then going back to the gold and silver standard problems, and that creates some serious problems in my mind.

Ambassador Moss. I am not suggesting that there should be a policy of lowering the wage base at all. I think, to the contrary, that that would buy a considerable amount of labor difficulty. I am only suggesting that with regard possibly to future increases in the Federal minimum wage which the Congress may enact or with regard to the contracting for outside services and in other respects, if done in a proper way, there possibly is a cost flexibility which we will have in the future which we do not have at present.

Mr. Tannenbaum. Well, I am a great admirer of yours, and I wish I could share your optimism. Another point here, though, is that Congressman Murphy and the other members raised the question of the serious differences of the treaty interpretations between our Government and Panama, involving hundreds of millions of dollars and perhaps going to the core of the treaties themselves.

Do you know of any other major areas of differences which have arisen, other than those discussed this morning?

Ambassador Moss. I think one possible area—and I do not know if it is a difference or not—but I think one thing we have to be mindful of is the labor provisions. Certainly, in statements made by Ambassador Lewis and others, they have stressed that there should not be any continuation of, as you described it, the silver and gold roll notion in the future; in other words, that all Panamanian and U.S. employees ought to be on the same wage level.

That is a decision that the Department of the Army and the Panama Canal Company are studying. Our position is that we have managerial flexibility there. I think that is one area to which we have to look at carefully and make sure that we are on the same wavelength. It is not so much a question of treaty interpretation as a question of policy, and I think that is a very real and important issue which both sides face.

Mr. Tannenbaum. One final issue here. Do you have any evidence of anticipated additional costs which will be added to the canal operation post-October 1979? An example would be that yesterday we heard that the railroad is operating at a loss, and the Panamanian officials indicated that they expect it to be operating at a profit very shortly. I wonder if the profit will just be added cost to the U.S. operation.

Ambassador Moss. No, sir. As I understand it, the profit arises from some plans that they have to improve the railroad, possibly with some international institutional support, to extend it into commercial areas on the Colon side, and then up into the sugar-producing country near Veraguas, and actually to improve the rolling stock and to add other features in such a way that it would be turned into a profitable operation.

I have heard no demand that any of that come from the United States, but I think it is merely a prediction of what they would hope to do with the railroad in the future.

Mr. TANNENBAUM. Do you think there will be any other operational cost increases by reason of the Panamanians operating the ports and causing additional costs to other agencies, like DOD, which are really U.S. taxpayer costs?

Ambassador MOSS. Certainly, a lot of additional costs have been discussed—such things as military costs and other things that have been identified. I do not personally know of any additional costs other than the ones that have been identified and discussed and debated so far. I just do not know of any additional ones other than those that are on the public record and are a matter of knowledge.

Mr. TANNENBAUM. I heard one thrown out the other day of $46 some-odd million for just reconstructing certain buildings in other areas while contracting the U.S. operations.

Ambassador MOSS. I think that may have been part of the military construction costs which, of course, are now and have been under scrutiny.

Mr. TANNENBAUM. Thank you very much.

Mr. HUBBARD. I have one final question that I did not anticipate, but I have been asked to ask, and it is a question that is pertinent.

Mr. Ambassador, in the recent trip by the committee to Panama, members of the committee heard continually from the Zonians about the loss after next October 1 of such prerogatives as commissary and PX privileges after 5 years for the canal employees. Is that right?

Ambassador MOSS. That is correct, sir.

Mr. HUBBARD. I understand that there is no such cutoff of commissary privileges for employees of the Embassy 5 years from now, is that correct?

Ambassador MOSS. That has not been discussed with the Panamanian Government. It is certainly not in the treaty, but I would say it is a different situation.

Mr. HUBBARD. How?

Ambassador MOSS. In that around the world, our embassies abroad and foreign embassies in the United States generally enjoy free import privileges as a matter of comity. The Embassy, for instance, would be able to set up a commissary in its own basement if we wanted to, and I think that is really a question aside from the treaties.

The Embassy has had commissary privileges off and on through the years from the military forces. Before my time, I gather that sometimes the Embassy has had them and sometimes it has not. But I think that question is not as important as the general principle that embassies generally around the world enjoy import privileges on the basis of reciprocity with other countries, and that really is not something that enters into the treaty relationship, but is a question of diplomatic practice apart from the treaty relationship.

Mr. HUBBARD. Would you not agree, though, that it is difficult to justify the disparity of treatment between the employees in the

Embassy and disenfranchised employees formerly enjoying such privileges when the zone was in existence?

Ambassador Moss. I will agree with you that apart from the legal aspect of the problem, there may be sort of a public relations or political aspect to it, only in that sense. But, as I say, I think the question is really a much broader one and involves our reciprocal practice around the world.

Mr. Hubbard. I am informed that Congressman Carney has one more question.

Mr. Carney. Mr. Chairman, I appreciate your giving me this additional opportunity to ask the Ambassador a question, but realizing that he is going to be 2,400 miles away, I think I should.

Mr. Tannenbaum was asking questions pertaining to additional costs. There would be a 14-percent increase in the cost to use the canal; 6 percent of which is brought about by the amount of money we have to pay to Panama.

Now, in the treaty, we have lost certain facilities that generate revenues in the Canal Zone. The Panamanian Government now will own those facilities on October 1. Do you have any idea of how much revenue we will lose because the nation of Panama will gain those? For instance, the docking facilities in Balboa, and then how much of that would be reflected in the increase of tolls?

Ambassador Moss. Congressman Carney, I know that we will be giving up certain facilities that are revenue-producing. We will also be giving up certain facilities which are unprofitable or which lose money.

Now, again, I am not an expert on this, but I believe that when you balance the profitable against the unprofitable activities over the years, it probably comes out to a slight gain. I am not aware of the figure; I can try to supply that for you.

But, of course, there are both sides of the ledger; we also give up some losers, such as, for instance, the railroad.

Mr. Carney. The reason I ask that question is, apparently, we are going to be losing a lot more than we are gaining, because there is an 8-percent difference in the tariff to use the facility, as of October 1, and I can only account for 6 percent. I have been trying to get some sort of an accountability of why the tolls are going up 14 percent.

Now, I have been told that one of the reasons is because we are losing some facilities that generate a profit, and I would like that clarified as quickly as possible.

Ambassador Moss. I will ask the Panama Canal Company to try to come up with that figure; they are the ones who calculated the 14-percent figure and who have made the studies in total increase requirements. I will certainly endeavor to get that for you.

Mr. Carney. Thank you very much, Mr. Ambassador. Thank you, Mr. Chairman.

Mr. Hubbard. I believe that finally does complete the questions, and we appreciate the question by Congressman Carney, as we do each of the questions by the Members of Congress and staff members.

We very much appreciate you, Ambassador Moss. I think I speak for each member of our subcommittee who have known you briefly or for a long time when I say that you are a plus and a real credit to our country, and we admire you and congratulate you on the work you are doing.

In your position, at times you will disagree with some of the Members of Congress, but you always have shown us respect, and we thank you for being with us this morning.

Mr. BAUMAN. Mr. Chairman, I want to join in thanking the Ambassador, also. And may I ask, were there any representatives of the Panamanian Embassy present during the testimony this morning?

[There was one acknowledgment.]

Mr. BAUMAN. Gracias.

Ambassador MOSS. Thank you, Mr. Chairman. I thank you and the other members for your generous remarks.

Mr. HUBBARD. We next welcome Hon. Clifford L. Alexander, Jr., Secretary of the Army. We apologize for the delay in reaching you as a witness. We anticipated you would be gone by now. But we will move as quickly as we can.

At this time I do have to make a unanimous consent request and make some brief announcements. H.R. 1958, a bill introduced by Congressman George Hansen, to "protect the interest and express wishes of the taxpayers of the United States on the Panama Canal Treaty of 1977" has been added to the list of bills to be considered in these hearings. This brings to five the number of bills we are now considering.

We will, of course, be asking for agency reports on House bill 1958, Mr. Hansen's bill.

At this time I would like to ask unanimous consent that all of the bills which are the subject of these hearings, and the accompanying section-by-section analyses and reports thereon, be placed in the record on the first day of our hearings, immediately after opening statements.

Is there any objection? Hearing none, it is so ordered.

I further ask unanimous consent to place into the record of these hearings, immediately after H.R. 111 and agency reports thereon, an analysis of that bill with appendices as written by Merrill Whitman, congressional consultant to the committee. This analysis was a part of the briefing book previously sent to all members.

Is there any objection to that unanimous consent request? Hearing none, it is so ordered.

Next, to prepare the subcommittee for future unanimous consent requests, I want to announce that I will ask that several studies in relation to the implementation of the new Canal Treaty and arrangements have been prepared for the committee to be placed in the hearing record, either before or after the testimony of the administration witness to which they most closely relate.

Is there any objection? Hearing none, it is so ordered.

Our second witness this morning is Hon. Clifford Alexander, Secretary of the Army, who has held this position since 1977. Before that time he served in a number of very distinguished posts in the Government, and has been an attorney in private practice for many years.

The Secretary of the Army has been for some time the officer of the United States designated by the President to be the sole stockholder of the Panama Canal Company, and supervisor of the Canal

Zone Government. As stockholder, the Secretary appoints members of the Board of the Company, and he also is delegated the President's authority with respect to employment and the coordination of employment practices in the Canal Zone.

So, Mr. Secretary, we are especially interested in questioning you, please, about the perspectives for the Board of the Panama Canal Commission, the ramifications of the Panama Canal employment system, and several other regulatory aspects of the Commission.

Mr. Secretary, we will ask you to give us your testimony and to answer questions. And if you desire to stay on afterward and visit with us, please feel free to do so.

STATEMENT OF HON. CLIFFORD L. ALEXANDER, JR., SECRETARY OF THE ARMY

Secretary **Alexander**. Thank you, Mr. Chairman, and members of the committee. It is a pleasure to be here with you today.

As you know, my primary responsibility as Secretary of the Army is to head the Department of the Army. However, I also have a major responsibility for overseeing the effective operation of the Panama Canal.

While the administration's legislation does not implicitly assign an oversight role, I can tell you that the Secretary of the Army will continue to have this oversight responsibility.

There are a number of differences in the two major pieces of legislation you are considering. Conversely, a number of the sections are generally parallel.

I would like to highlight the differences in certain key sections in which I believe the administration's version to be markedly superior in facilitating the continuing efficient operation of the canal.

I consider the form that the Panama Canal Commission is to take as one of the most important differences in the two pieces of legislation. Our proposal continues it as a corporate agency while H.R. 111 would make the Commission an appropriated fund agency.

Next, the employee provisions in both bills are very similar. But H.R. 1716 would place all employees of the Commission under the same labor management policy, while H.R. 111 would place all employees of Federal agencies operating in the former Canal Zone area under the same labor management policy.

Further, the administration's bill deletes the requirement to pay interest to the U.S. Treasury. This would enable the maintenance of the lowest toll rate practicable. H.R. 111, by contrast, continues to include the interest and, in addition, requires that amortization of the investment be included in the toll base.

There are a number of other differences, many important, between the two bills. I am confident that they have been, or will be, brought to this committee's attention during the course of these hearings. But let me focus on the three key aspects that I have mentioned.

As recommended in H.R. 1716, the corporate form of the Panama Canal Company has proven for almost 30 years that it is an efficient system of operating the canal. While the canal enterprise has a unique operating environment and unique responsibilities, it is primarily and essentially a business enterprise. It therefore requires a combination of managerial and financial flexibility.

To operate the canal efficiently, the Commission will have to deal successfully with the problems of functioning in a foreign country. If local authority is not granted the Commission to resolve problems with Panama, every incident could have the potential for escalation into a country-to-country confrontation. By separating the Commission as a corporate entity, the likelihood of such escalation could be diminished.

Authority for decisionmaking to meet operational problems requires that the Commission be granted financial flexibility in order to carry out its responsibility for financial self-sufficiency. In order to achieve financial self-sufficiency, the Commission must be able to adjust its costs and rates to respond to changing traffic.

The Government corporation form proposed by the administration for the Panama Canal Commission would essentially continue the organizational form of the present Panama Canal Company, which was created by Congress in 1950 in recognition of the business activities inherent in the canal operation. Under the corporate form, the Company has been able to maintain an amazing degree of stability in its toll rates and its service to shipping and has never needed a congressional appropriation.

While successful Company operation is attributable in large part to the managerial and financial flexibility it enjoys in its corporate form, it also has maintained a high degree of accountability to Congress. The 1950 legislation established the Company and set forth the guidelines for its operation; the budgetary controls imposed by the appropriations committees that annually review the budget assure that the Company is spending within its revenues; and audit by the GAO, which reports upon the Company's accounting procedures and policies, further assures that the Congress maintains control over the corporation.

Congress has consistently, for more than 50 years, incorporated many Government agencies which function primarily as commercial activities. The incorporation of the Panama Canal Commission, which like the Company, will be in the business of transiting ships, would therefore appear to be entirely appropriate. H.R. 1716 would take this approach and would retain for the Commission all of the congressional controls which have pertained to the Company.

The remarkable record of achievement of the Panama Canal Company during its 28-year existence as a corporate entity also supports the argument that the Commission should be a corporate rather than an appropriated fund agency. The Company has operated on a self-sufficient basis since its creation, while at the same time paying back to the Treasury millions of dollars on the investment of the United States in the agency and many more millions in interest on that investment.

Further, it has also invested a considerable sum of internally generated funds in capital improvements to Company facilities, while at the same time financing capital improvements to Canal Zone Government facilities. Although it is authorized both appropriations and a $40 million borrowing authority, it has not required the use of either, even during a period of operating losses. This record of the Panama Canal Company speaks for itself on the question of the efficiency with which a corporate agency can operate.

In the area of labor relations, the administration's bill proposes that all employees of the Panama Canal Commission, both United States and non-United States, be covered by a labor-management policy tailored to meet the needs of the unique situation in Panama.

U.S. employees of other Federal agencies operating in the area would be covered by Federal labor-management relations enumerated in title VII, Civil Service Reform Act, while the heads of these agencies would be given the option to place their non-U.S. employees under the Panama Canal Commission's labor management program.

The Panama Canal Commission is a unique organization, with a work force which will become increasingly Panamanian at all levels over the next 30 years.

A labor relations system focused largely on local conditions and issues would be most appropriate in terms of facilitating—or at least avoiding interference with—the gradual transition to Panamanian control of canal operations. Coverage by a separate labor relations policy, dedicated to the local situation, will serve to facilitate the evolutionary process which will be taking place.

This will not be true, however, for DOD elements in Panama which will continue to perform the same functions as they do today until phase out of their operations. In all other areas of the world we apply the labor relations policy specified in title VII of the Reform Act to our U.S. citizen employees and we believe that this should also be the case for the DOD-U.S. employees in Panama.

The administration's proposed bill also provides for a package of personnel benefits. Because of the great decrease in the size of the Panama Canal Commission in comparison to the Panama Canal Company and the Canal Zone Government, we have projected that some 2,600 employees, both United States and non-United States, will lose their jobs through a reduction-in-force action. Due to the size and complexity of this action, and in consideration of its impact on the lives of employees and their families, we ask passage of H.R. 1716 by May 31 so that critical preparatory actions can be completed by the treaty effective date.

The most critical problem that will develop by late passage of the proposed legislation involves the transfer of over 3,000 employees to local Department of Defense activities. If passage is unduly delayed, this transfer would be seriously hampered because of the lead time required by law and regulation to effect such actions and to guarantee observance of employee rights.

If passage is delayed beyond October 1, the transfers will be prevented because the Department of Defense activities will not have been legally authorized to pay the transferred employees from appropriated funds. Inasmuch as the Panama Canal Commission is precluded by the treaty from continuing the functions in question, it would then be necessary for the Commission to terminate these employees. This would be chaotic, not only for the Commission, but for all Federal agencies operating in the area.

One of the primary goals of the Panama Canal Company is to maintain the toll rates as low as practicable in order to continue to attract shippers worldwide. As mentioned earlier, the Company has been successful in this endeavor. It will, however, be necessary to raise tolls to accommodate the increased payments to Panama provided for in the treaty. We want to keep the tolls increase as low as we can, consistent with sound business practices.

Initial estimates indicate that a tolls increase in the neighborhood of 14 percent under the administration's legislation would meet the Commission's financial requirements, provided that, as recommended in the administration's bill, interest on the investment is no longer required.

Under H.R. 111, with its interest and amortization of the investment, it is estimated that the increase would be considerably more, approximately—and I stress approximately—35 percent. We operate a utility for world shipping, and the tolls must be kept low enough so as to be financially advantageous for the shipper to use the canal.

We are asking the Congress to now pass the necessary legislation authorizing the United States to properly operate and defend the Panama Canal, and to effectively carry out the functions authorized through our treaty. We believe that H.R. 1716 accomplishes this.

Thank you very much. I will now answer any questions you have.

[Questions submitted by the subcommittee to the witness and answered for the record of the hearing follow:]

QUESTIONS OF SUBCOMMITTEE ANSWERED BY MR. ALEXANDER

Question. How would labor-management provisions of H.R. 111 and H.R. 1716 affect the ability of the Secretary of the Army to negotiate collective bargaining schemes for the Canal and other agencies in the Canal area? How will the H.R. 111 provision on labor-mangement relations applying to all agencies relate since the Treaty guarantees collective bargaining only for the Commission?

Answer. H.R. 111 would require the Secretary of Defense to establish a labor-management relations policy, providing for collective bargaining between management and employees of all government agencies in the Canal Zone. H.R. 1716 would require the President to establish such a policy applicable only to employees of the Panama Canal Commission, US citizen and non-US citizen employees alike. In practical terms, under both bills the labor relations policy would be installed by the Secretary of the Army after consultation with all interested parties.

H.R. 1716 would make inapplicable to US employees of the Panama Canal Commission the provisions of Title VII, Federal Service Labor-Management Relations, of the Civil Service Act of 1978 (5 U.S.C. 71). A separate policy (now in draft form entitled "Joint Panama Canal Commission/Department of Defense Labor Relations Policy") would apply to all employees of the Commission, US and non-US. The Joint Policy could also be administratively applied to non-US employees of the US Southern Command (SOUTHCOM) if the Commander-in-Chief, SOUTHCOM, so determined. other non-DOD agencies in the Canal Zone would be free to apply Joint Policy provisions to their non-US employees. Title VII would automatically apply to US employees of all government agencies (exclusive of the Commission) in the Canal Zone.

The Panama Canal Commission is a unique organization, with a workforce which will become increasingly Panamanian at all levels over the next twenty years. A labor relations system focused largely on local conditions and issued would appear to be most appropriate in terms of facilitating—or at least avoiding interference with—the gradual transition to Panamanian control of Canal operations. Coverage by a separate labor relations policy, dedicated to the local situation, will serve to facilitate the evolutionary process which will be taking place. This will not be true, however, for DOD elements in Panama which will continue to perform the same functions as they do today until phase out of their operations. In all other areas of the world, we apply the labor relations policy specified in Title VII of the Reform

Act to our US citizen employees and we believe that this should also be the the case for the US employees in Panama.

By the terms of Title VII of the Reform Act, non-US employees of US government agencies employed outside the United States are excluded from its coverage. This provision appears to mandate a labor relations system for Panamanian and other non-US employees of DOD elements which is more attuned to local conditions and customs.

Thus, two elements form the basis for our advocacy of H.R. 1716: (1) the statutory exclusion of non-US employees in the Canal Zone (and the concomitant inclusion of US employees) and (2) the unique characteristics of the Panama Canal Commission which require a distinct and dedicated labor relations policy.

Question: Would meetings of the Board of the Panama Canal Commission be open for public scrutiny under the provision of law requiring such meetings be generally open to the public? Need there be any special language to insure that such meetings be closed?

Answer: We assume that you are referring to the open meeting provisions of the Government in the Sunshine Act, 5 U.S.C. § 552*b*. Those provisions apply to "any agency . . . headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate." 5 U.S.C. § 552*b*(a)(1). The term "agency" includes "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government." 5 U.S.C. § 552(e).

There is no doubt that under either H.R. 111 or H.R. 1716, the Commission would constitute an "agency" within the meaning of section 552(e), However, as established by H.R. 1716, the Commission would not fall within the scope of section 552*b*(a)(1). Although the Commission would be headed by a collegial body (the Board of Directors) appointed by the President (see Section 205 of H.R. 1716), such appointments would not be with the advice and consent of the Senate. Therefore, reading the terms of the statute literally, the open meeting provisions would have no applicability.

The answer with respect to H.R. 111 is more difficult because the Board of Directors would be appointed by the President with the advice and consent of the Senate (see Section 102(b) of H.R. 111). The significant question is whether the provision that the Board "shall act under the direction of the Secretary of Defense" (section 102(a) of H.R. 111) would cause the Government in the Sunshine Act not to apply. The answer to that question is simply unclear. The argument can be made that the Commission would not be "headed by a collegial body" because the Board of Directors ultimately would be subject to the direction of the Secretary of Defense. It is our view that the provisions of H.R. 111 for "direction by the Secretary of Defense" is inconsistent with paragraph 3(a) of Article III of the Panama Canal Treaty of 1977 which provides that "the Panama Canal Commission shall be supervised by a Board." Accordingly, if it were considered to apply the provision of the Sunshine Act to meetings of the Board, an explicit provision to that effect should be included in the implementing legislation. However, we do not consider direct application of that statute to be desirable.

As a practical matter, we have no objection to the general concept that the meetings of the Panama Canal Commission should be open to members of the public. However, compliance with the explicit provisions of the Government in the Sunshine Act often can be a complicated and burdensome exercise. Moreover, given the substantial involvement of the Republic of Panama in the affairs of the Commission, application of the Act may in certain instances cause unforeseen problems. Accordingly, the better approach would be not to have the Act apply to the Commission but to have in the legislative history of the Treaty implementing legislation an expression of Congressional intent that, to the extent feasible and practical, given the peculiar situation of the Commission, Commission meetings should be open to the public.

Question. Under the plans of the Executive in connection with the provisions of H.R. 1716, would the Stockholder of the Commission be a general coordinator for matters affecting the Panama Canal with respect to the Commission as well as other entities connected with Canal operations?

Answer. The role contemplated by the Administration for the Stockholder of the Commission would be the same as that provided by the current law for the Stockholder of the Panama Canal Company, i.e., he would represent the United States in its capacity as owner of the Canal Agency. It is the Administration's intent that the President would retain his statutory role as Stockholder. In this role he would appoint the members of the Board supervising the Commission. It is intended that five cabinet level U.S. agencies would be represented on the Board under the Chairmanship of the DOD representative, who would be the Secretary of the Army. This would provide for coordination of matters affecting the Panama Canal with respect to the Commission as well as other entities connected with Canal operations.

Mr. HUBBARD. Thank you, Mr. Secretary.

No provision in the legislation directly addresses the question of the Commission's Board operations. If one or more of the seats on the Board are for any reason vacant, would language stating that the Board will continue to function as long as a certain number of members are sitting be desirable?

Secretary ALEXANDER. No, Mr. Chairman. Section 206 of the bill provides for the conduct of business by the Board with a quorum consisting of fewer than all of the members present at a particular meeting.

This section also preserves the U.S. majority on the Board. We expect vacancies on the board will be filled probably by both countries. We therefore believe the proposed language is unnecessary. Just by virtue of the U.S. majority, it will be able to assure the Commission's bylaws and mode of operation are consistent with the U.S. interest.

Mr. HUBBARD. How will the United States coordinate the activities of the five U.S. members of the Commission's Board of Directors?

Secretary ALEXANDER. While the proposal legislation does not address the point, the President has directed that an interagency group cochaired by representatives of the Department of Defense and State coordinate with other involved agencies—Treasury, Transportation, and Commerce—in the formulation of policy positions which the U.S. Board members will carry out.

Mr. HUBBARD. Mr. Secretary, how do you feel about the concept of limiting the terms of members of the Commission's board of directors?

Secretary ALEXANDER. To limit their terms of office?

Mr. HUBBARD. Yes.

Secretary ALEXANDER. I would feel, sir, this would be unnecessary and that it would be appropriate they be representatives from the U.S. Government and that they would serve at the pleasure of the President. The President could appoint someone else, but I should think they would serve at the pleasure of the President.

Mr. HUBBARD. Will the United States and Panamanian members of the Commission be subject to the executive branch rules on financial disclosure or ethical conduct?

Secretary ALEXANDER. I believe legally, both United States and Panamanian would not be, in that they're in an advisory capacity as Board members.

For practical purposes, it is important that those who are on the Board would be subject to the recently passed legislation that goes into effect on July 1. They would be Presidential appointees and would have submitted all the forms required and would have the matters out in public, in terms of their net worth and whatever potential conflicts there might be.

But I don't believe the law requires that someone in an advisory capacity, as the Board would be, to actually be subject to these provisions.

Mr. HUBBARD. Would the Deputy Administrator or other high-ranking Panamanians, other than Board members, be subject to such rules?

Secretary ALEXANDER. I do not believe the Board members would be, for the same reasons as would be true for Americans. In terms of employees, they would be subject to the same rules that the upper-level U.S. employees would be subject to.

Mr. HUBBARD. In its testimony the State Department spoke briefly to the Office of the Chief Engineer. What is your view of this Office, which is established by House bill 111?

Secretary ALEXANDER. I do not believe we need that specific office. The Administrator and Deputy Administrator will provide for the overall supervision, and the necessity for that kind of expertise would be included, obviously at high levels within the staff. But as a specifically designated position, I do not believe it would be necessary.

Mr. HUBBARD. Aside from the Panama Canal Commission, agencies of the United States in the canal area will have an opportunity to opt in or out of the Panama Canal employment system.

Could you explain the theory behind the employment system and why you feel it should be an optional system for U.S. agencies?

Secretary ALEXANDER. As far as DOD, as I indicated in my statement, we believe they should continue under title VII of the Civil Service Reform Act.

For the new Panama Canal Commission, the flexibility that would be given to us in a Commission that is in transition, with more and more Panamanians, and a Commission that is unique in terms of its function for the next 20-plus years, we feel it would be useful to have a specifically tailored program for that Commission and to give to non-U.S. citizens, Southcom, and other potential DOD entities, an opportunity to opt into it if they so desire.

Mr. HUBBARD. In response to questions for the record you made reference to a Joint Panama Canal Commission, and a Department of Defense labor relations policy.

Would you please explain the origins and the present status and meaning of that policy?

Secretary ALEXANDER. Article X of the Panama Canal Treaty requires us to develop a labor relations system—a collective bargaining system—for the Canal Zone after consultation with labor organizations. We began considering how to meet this requirement last spring and determined that there were at least five different options possible. All were based on Executive Order 11491, as amended, Labor-Management Relations in the Federal Service. The five options were presented to the various agencies in the Canal Zone as well as to unions having recognition in the Panama Canal Company/Government and the U.S. forces early last summer. In August, the AFL–CIO formally presented us with a sixth option.

While we were considering the AFL–CIO comments, the Civil Service Reform Act—CSRA—was signed by the President on October 13, 1978. Title VII of the act governs Federal sector labor relations and represents a significant change from Executive Order 11491. These changes also had to be considered when revising the Canal Zone policy. Thus, the labor relations policy you refer to represents an amalgam of our ideas, Panamanian-based agency and union comments, and the major provisions of title VII, CSRA.

We are in the final stages of consultation with the AFL–CIO on the policy. It will contain all salient features of title VII, CSRA, as required by both H.R. 111 and H.R. 1716. The one major exception will be that the dispute resolution machinery will be wholly dedicated to the unique local situation rather than being provided from Washington, D.C., by the Federal Labor Relations Authority. The policy will apply to U.S. and non-U.S. citizen employees of the Panama Canal Commission. It could also be administratively applied to non-U.S. employees of Ussouthcom and other Federal agencies in the area. Title VII, CSRA, automatically applies to U.S. employees of all Government agencies—exclusive of the Commission—in the Canal Zone.

Mr. HUBBARD. How do you expect the collective bargaining scheme that is adopted for the canal area will affect either the personnel regulations issued by the Commission and other agencies, or the concept of U.S. control of the canal for the next 20 years?

Secretary ALEXANDER. I would think that under both Chairman Murphy's bill and the administration's bill the concept of consultation with the Board and the Department of the Army would be in order. So I don't see great variations, in terms of practicality, how the ultimate judgments would be reached through the collective bargaining process.

There would not be collective bargaining, for example, over wages, as there would not be in other Federal entities.

Mr. HUBBARD. What was that last statement?

Secretary ALEXANDER. There would not be collective bargaining over wages, just as in other Federal entities.

Mr. HUBBARD. On page 7 of your statement, Mr. Secretary, you talked about a reduction in force of 2,600 employees. The canal organization now has 14,000 employees, and the canal Commission will have about 8,000 employees. This would mean a loss of some 6,000 employees.

What happened to the other 3,400 employees? Are they retiring?

Secretary ALEXANDER. No, sir. Several of the functions that are now performed by the Canal Zone Government will be undertaken by agencies of DOD. Some 3,400 of the Canal Zone Government employees will be transferred to the DOD.

Further, some additional personnel will be eliminated during the 30-month period after October 1 in other zone functions, such as police and fire, which will be phased out.

Mr. HUBBARD. Who will take over that?

Secretary ALEXANDER. That will be taken over by the Government of Panama.

Mr. HUBBARD. Lastly, what are the reasons for the change in reporting channels cited on page 1 of your statement, to the effect that, as a stockholder of the Commission, you would be reporting to the President through the Secretary of Defense?

Secretary ALEXANDER. The reason for this is, in all other areas of my responsibility, with the exception of the Corps of Engineers, the reporting is through the Secretary of Defense. It seemed to us to be a more orderly and sensible route, while much would be delegated to the Secretary of the Army, that the reporting mechanism be the same or similar—as on most other functions.

Mr. Hubbard. Chairman Murphy?

The Chairman. Thank you. I welcome Secretary Alexander to the Committee.

I have no questions, but I have some questions which I would pose to the Department. I appreciate your testimony.

Secretary Alexander. Thank you.

Mr. Hubbard. I recognize Congressman Bauman, the ranking minority member.

Mr. Bauman Mr. Secretary, I know my colleagues have heard me make this statement before, but just for your own edification—and indeed, it is that—we were told, the people of the United States and the Congress, by President Carter, by Secretary Vance, by Mr. Linowitz and Mr. Bunker, and uncounted other officials, that the treaty would not cost the taxpayers of the United States one single dollar more.

Now, when we were in Panama previously and had occasion to talk to General McAuliffe, it appears that an estimate of the annual cost being transferred to DOD, for the functions that DOD will assume from the Canal Company and Canal Government, the original estimate is from $60–65 million annually, and it has now risen to at least $80 million annually by 1984. This means anywhere from a $1½ to $2 billion in 20 years will be assumed by the taxpayers as a result of this treaty, instead of one single dollar.

I would ask you to give the committee, to the extent possible, an accounting of all the projected costs for the life of the treaty, and if you also can, the Defense Department as a whole. We have to assume that is now projected so that we can have that figure before we start our markup. I think it will bear on the type of bill in some respects, if you could provide that for us.

Secretary Alexander. Certainly, sir.

I could just for the present provide what is in our budgets, and there is precision as to those. There was a payment, as you know, of $10.9 million under the contingency fund in the 1979 budget for the Defense Department. And there is a fiscal year 1979 supplemental request of $36.9 million before the Congress, and of that, $32.2 million was for the Army.

For the 1980 fiscal year budget, the DOD amount is $89.5 million, and of that, $51.2 is Army-related. So the total for DOD through fiscal year 1980, with some precision, is $137.3 million.

Mr Bauman. That is the projected operating cost, as well as military construction required to carry that out? If you could give us some detailed accounting beyond the totals, it would be helpful.

Mr. Secretary, in your statement you say you will continue to have the primary authority of oversight under the treaties and under the law in terms of the President's bill, the administration's bill. We have been assured of the same thing by Secretary Christopher and other witnesses.

If that is the case, what is the objection to writing into law that the Department of Defense or yourself would advance more appropriate than the Secretary of Defense, who will in fact continue to have this authority? Because at one point we were told the administration might at some point want to transfer it to the Department of Transportation.

Secretary Alexander. Certainly, as you indicated, there was discussion within the administration of that. The decision has been that it would be through the Defense Department and primarily the responsibility of the Secretary of the Army. The tradition, as you well know, has been the Secretary of the Army has been the stockholder.

I believe, however, that the President should retain his flexibility in this regard. I believe there are several logical reasons for it continuing this way. It is our position that this will take place, and is the most orderly way to proceed for the future of the United States and for the canal traffic.

Mr. Bauman. Well, you might want to confirm your opinion of what will happen in law.

Let me ask you one other question. There has been some discussion about the inability of the Congress to pass on the legislation by the required date, or even the possibility that the Senate-House conference might get bogged down.

I notice you say that if action isn't taken by October 1, the Department of Defense will be unable to pay a certain number of employees to carry out the functions assigned them undet the Treaty; is that correct?

Secretary Alexander. That is correct, sir.

Mr. Bauman. So it would not be very easy for the administration, under its general executive discretion, to implement this treaty if, indeed, the people who are expected to carry on the operations now aren't being paid.

Secretary Alexander. It is the legal responsibility of all of us under the treaty to do the best we can to implement it. Obviously, it's a treaty of the United States and we'll do the best we can.

The point I intended to raise in my statement was the hardships placed, not only on us in Government, but particularly individual employees of the Canal Zone now who might, through employment actions, be RIF'd, to have proper notice served on them or their families.

So there would be significant problems if much of the legislation were not completed by or before May 31. Obviously, I have no control over the will of your committee, nor of the Congress——

Mr. Bauman. Very few of us do.

Secretary Alexander. Certainly the chairman of this sub-committee and Chairman Murphy have indicated that markups will be taking place in March. We only hope the legislation will follow in due time.

Mr. Hubbard. Do you believe that the Panama Canal Treaty best serves the interests of the United States?

Secretary Alexander. I certainly do, personally, yes, and for a whole host of reasons.

Mr. Hubbard. Thank you.

Congressman Carney?

Mr. Carney Mr. Secretary, I appreciate your coming in today.

I would like to ask some questions that haven't been referred to in the presentation. I am a new member of this committee, and my line of questioning has to do with our ability to defend the canal.

Can we, today, defend the canal from terrorist attacks?

Secretary Alexander. I think the 193d Brigade, which is our principal unit in Panama, is quite competent. I have seen them train and they are prepared to meet certain terrorist contingencies.

But can we protect against any and every single contingency; I can't say we could. I think it's in our best interest to always be alert to those contingencies and to continue to work with the Government of Panama, as we are, to try to spot any problems that might arise.

That, of course, is one of the reasons the treaty itself is useful, where we have cooperation between the two nations.

Mr. Carney. So basically the canal could be deemed impassible at any time and we really cannot guarantee that won't happen today, or from the time of October 1 and the year 2000. And, of course, after that, we can't guarantee anything.

Secretary Alexander. Well, I would not be that pessimistic. It seems to me there are certain contingencies that we cannot protect against, but there are also many, many more that we are capable of protecting against. General McAuliffe and Anson can see to it that those contingencies will be protected against. We have highly motivated and well-trained soldiers, and they have done their training exercises and done them extremely well.

I think to be a prophet of doom would be inaccurate. Again, we have all heard the stories during the debate over the treaty, that if you drop a glove in the lock it will freeze the lock and shipping will be halted for such and such a period of time. Those contingencies are possible, but the probability is diminished significantly by the cooperation between the two governments, and I think by the strong presence of the 193d Brigade.

Mr. Carney. Do you think under the terms of the Treaty, where we lose the 5-mile buffer zone inside the canal, that our ability to defend the canal diminishes?

Secretary Alexander. Not one bit. We couldn't have people on every inch of those 5-miles on either side, and 51 miles across. We have certain defense commitments which will continue to be met. We are able to do that in those zones.

As you know, many parts of those zones are wooded areas, and we have methods of overflying those and knowing what is going on there. But their ownership is not going to increase any problems.

Mr. Carney. Will it decrease the probability of any terrorist action?

Secretary Alexander. I think there are some who would speculate that it does. I think it is better to say, through the cooperation between the two governments, that their mutual interest is in the preservation of a safe canal for international shipping, and it is our responsibility to work and preserve that; and also, it requires the cooperation of the Panamanians as well. I think that will be forthcoming.

Mr. Carney. Of those some, then, you would be in that category that feels we would enhance our ability?

Secretary Alexander. I think we would be capable of maintaining our defense of the Panama Canal throughout, and I think that will continue.

Mr. CARNEY. Do you anticipate a reduction in military forces over the next 20 years in the Panama Canal?

Secretary ALEXANDER. I would not anticipate at the present time a reduction. Of course, it's up to us within the Defense Department to continually assess our needs there. I could not really speak to the future, nor for the other services there as well.

Mr. CARNEY. Do you feel the presence of large defense forces in the Panama Canal has an effect on military capabilities in South America?

Secretary ALEXANDER. I believe General McAuliffe's command, as it relates to your question, insures that the entire region would be properly protected.

Mr. CARNEY. My next question, then, would be: Are we making any contingency plans, any efforts to find out where we can have this type of military exposure in the proximity of South America, or even within the countries of South America, once we lose them in the year 2000?

Secretary ALEXANDER. As far as the year 2000 is concerned, and the possibilities at that stage, it really would only be reasonably assessed at least a decade from now, probably more. I don't think we should say that any part in that section of the world would be precluded, and that includes everybody potentially. I would not exclude any country at this stage.

Mr. CARNEY. But you do feel their presence has a stabilizing effect on other nations now?

Secretary ALEXANDER. I think it's a very useful presence; yes.

Mr. CARNEY. When will we lose the jungle training school?

Secretary ALEXANDER. The jungle training school continues to the year 2000.

Mr. CARNEY. We will control that area to the year 2000 in the jungle training school?

Secretary ALEXANDER. Yes.

Mr. CARNEY. You don't have the ability to project over two decades, I guess, the military capability, our military capability. So in general, would it be fair to say that you, as the Secretary of the Army, feel our defense capability in the canal would remain the same with or without the treaty?

Secretary ALEXANDER. I would say it's fair to say that we have a treaty, and having that treaty enhances our relationship with the sovereign state where the canal is located, and that is useful from a foreign policy point of view, and it is probably useful in terms of, many would say, in cutting down the problems that might arise in having some country being antagonistic to us. So it's a yes and no answer to that, I guess. I perhaps am oversimplifying it.

We know the long history of some good relationships and some not so good, relating to the fact that we, as the Panamanians construed it, were in the middle of their country and that had an effect on them, and potentially could have an effect on the people.

Now, to the credit of their government at the time, there was no damage to the canal. I don't believe, however, that has been the issue. The issue has been, do you reduce the number of people you potentially have, and I think reasonable people can say that can be reduced by treaty. I think it's in our best foreign policy interest; yes.

Mr. CARNEY. I seem to recall many occasions in the past few years where our best interests in foreign policies have not been the best interests in our ability to defend our Nation.

However, the point I am trying to bring out is that—I'm not trying to bring the point out, but I would like you to express it for me. Is it your feeling that we will reduce the chance of having a Panamanian national, through some terroristic act, deny us the use of the canal because of the treaty?

Secretary ALEXANDER. Again, with the treaty in effect, I would guess that reasonable people could come to the conclusion that you therefore cause fewer people to feel antagonistic toward the canal and its function. I think that has certainly been the foreign policy position of our country.

The essential point is, the canal itself, I believe, will be protected by our presence; it will be important for both countries to continue to have the canal function well for the interests of international shipping.

And if I could put on my other hat, that of a stockholder, it is important in that context, particularly in our work with the Panamanians, because it is in their mutual interest to have the canal function, and in the best interests, economically, of international shipping.

Mr. CARNEY. If I might continue, do you believe there are any other nations in South or Central America, or let's say Cuba, for instance—do you believe any of those nations have the capability of breaching the canal, for whatever reason, and rendering the canal useless?

Secretary ALEXANDER. I guess every nation could breach it, but I don't think they could make it useless.

Mr. CARNEY. In other words, you feel our defenses are adequate now to prevent any foreign nations from attacking the canal, say from the air or something like that?

Secretary ALEXANDER. That is correct.

Mr. CARNEY. Your concern would be for someone in the near proximity of the canal to go up and perhaps sink an oil tanker or something like that in the lock area?

Secretary ALEXANDER. Well, I guess there are many potential hypotheticals, but very few of them are realistic. I think we are prepared to do our job.

Again, I don't want to mislead you and say we can protect against all contingencies, but I think on a very significant number of them we can.

Mr. CARNEY. Thank you, Mr. Chairman

The CHAIRMAN. Thank you.

I would ask counsel to clarify some of the financial differences between H.R. 111 and H.R. 1716.

Mr. TANNENBAUM. Mr. Secretary, I am sure you agree with Congressman Murphy and the other Members, that they are as concerned as you are, and as the administration is, in keeping the tolls as low as possible.

Secretary ALEXANDER. I don't just agree with you, but I know of Congressman Murphy's interest. Is the canal functioning well in the best interests internationally?

Mr. TANNENBAUM. Yet the administration points to its magic formula by keeping tolls increases to 14 percent, versus a 35-percent increase that you state exists in the Murphy bill, in H.R. 111.

Aren't we really kidding ourselves here? The difference between the two bills on the cost element is a shifting of the costs? In the administration's bill the costs are shifted directly to the U.S. taxpayer, whereas the Murphy bill considers all the existing elements of the costs?

Secretary ALEXANDER. I don't think in either piece of legislation are these particular costs borne by the U.S. taxpayer. They are borne by international shipping.

The contention we would make is that adding amortization costs, and adding an interest payment that is now running just over $20 million to the requirement, would cause us, in order to be a self-sufficient entity, to have to increase tolls, of approximately 14 percent versus the 35 percent.

Mr. TANNENBAUM. Then we get into the question of using the words "adding" or "subtracting." The interest cost has been a cost of the canal operation for quite a few years, isn't that true?

Secretary ALEXANDER. It has, indeed, yes.

Mr. TANNENBAUM. And the administration's bill proposes to subtract it and charge it to the taxpayer, which as Congressman Bauman pointed out, runs in the face of the statements previously made by the treaty negotiators before the Congress.

Secretary ALEXANDER. The administration feels that without the requirement of the interest payment, that the toll rates could be maintained and the toll increase could be maintained at approximately 14 percent.

Mr. TANNENBAUM. I understand that. But by shifting the interest costs, which I think amounts to about 11 percent of the toll base, if I understood Governor Parfitt's analysis correctly, that is just shifting that 11 percent cost to the U.S. taxpayer, which he estimates would be in the range of some $20 to $26 million a year.

Secretary ALEXANDER. I would not see it as a cost. I would presume an interest payment is subject to whatever the capital it is being paid on. It is not as if it were an appropriated amount coming from the U.S. taxpayers, so I don't see it in that sense.

But now I see the argument and understand the argument, and I suppose it's terminology that we differ on. I also believe it's important that we realize if those two items are added, that potentially the toll increase could be some 35 percent.

Mr. TANNENBAUM. Yes; we understand that, and we're very concerned about it.

You take the other components of the differential between 14 and 35 percent, the other costs again would be indirect costs, which would be chargeable directly to the U.S. taxpayer. There's no question about that, is there?

Secretary ALEXANDER. I don't know that I follow the other costs you're referring to.

Mr. TANNENBAUM. Let's take amortization. If you charge amortization, then you really are reducing interest and depreciation. So for the long haul it's a wash. I can see that factor as being not a very serious one, but——

Secretary ALEXANDER. It lessens. It isn't a wash at the present time, I don't believe.

Mr. TANNENBAUM. Initially it looks good, to say it's only a 14-percent increase. What I'm saying is that, in the long run, you have the serious problem—such as the payments now to Panama which you just heard me discuss with Ambassador Moss—and now it's acknowledged those payments would be $65 million a year, plus another $10 million on the contingency item.

I think there is no question but that such payments would be well over $100 million because of the increments mandated by the treaty within the next 5 or 7 years, and probably as high as $150 million per annum during the term of the treaty.

Are you concerned about this canal operation running in the red in the foreseeable future?

Secretary ALEXANDER. It has been in our interest to see to it our operation is run in a fiscally sound manner, and I think it can continue to do so.

The contingency payment, although I gather there's some talk about it in Panama, it is certainly my understanding, and that of many others, that it's contingent upon what the profits show. If it doesn't show anything, then the contingency payment can not be realized.

The other items, as Ambassador Moss indicated, are treaty-related items, and the $10 million payment that relates to the operation of the canal. I know in the early days of the canal, from 1914 or so, until the seventies, there were no toll increases whatsoever. There have been toll increases, a little over 19 percent, two of them, since that time. It's a more realistic period, frankly. So I would guess in the future, in a reasonable period of time, there may be some additional toll increases.

I would not be a prophet of doom, that the canal will run in the red in the future.

Mr. TANNENBAUM. Just on that one item, the payments to Panama, you go from $2 million to $100 million, or $150 million a year——

Secretary ALEXANDER. On those figures, the projection, as I remember it, for the fiscal 1980 budget, is $54 million. Then there's a $10 million payment under the treaty itself, and then potentially another contingent payment after that.

I believe those are the——

Mr. TANNENBAUM. There are three $10 million payments.

Secretary ALEXANDER. Well, one is for services, and one presumes you have services that are worth $10 million.

Mr. TANNENBAUM. And the $55 million payment is to be reevaluated in 5 years, and then biannually. It certainly will increase that overall payment substantially, and I would imagine within the next 10 years it will double.

Secretary ALEXANDER. I don't feel competent to say what may happen in a decade from now. I would only give those figures that I know presently within fiscal year 1980, on those payments payable to Panama.

Mr. TANNENBAUM. I don't think there is any question but that the dollar value today is half what it was 10 years ago, and with the increments called for in the treaty of those 10-percent payments, I don't think it will be less than that over the next 10 years. So the $54 million, just automatically, if we hold our costs down, will more than double in that period.

Secretary ALEXANDER. I hope it doesn't.

Mr. TANNENBAUM. I hope it doesn't either.

Mr. HUBBARD. Is there any objection to Congressman George Hansen asking a couple of questions? All right.

Mr. HANSEN. Thank you, Mr. Chairman.

Mr. Secretary, we were originally told there would be no cost to the American taxpayers for the treaties, but now, of course, we find $2 or $3 million cropping up for the transfer of graves, and find within the line items of the Air Force budget that we're going to fund post office expenses that were covered by the Panama Canal operation before. We're going to fund police expenses, and the sanitation expenses which are a part of the $10 million annual payment to Panama. Then there is the loss of income from some of the facilities in the zone and the increase in tolls. Finally, as we discussed this morning, we guarantee the payments to Panama that the tolls don't cover.

All of this brings us down to another open-ended question. Beyond the year 2000, if we still are committed, as the treaties provide, to some defense of the canal, and we have vacated our bases as required don't we get into a base rental problem similar to the agreements we have had to make around the world, agreements which cost us hundreds of millions of dollars per year?

What do you envision as far as our payments to Panama beyond the year 2000 for military bases and other commitments?

Secretary ALEXANDER. Congressman, I could not give you an estimate of what those costs would be.

Mr. HANSEN. There will be expenses?

Secretary ALEXANDER. Yes.

Mr. HANSEN. And they probably will be considerable?

Secretary ALEXANDER. I would say there will be expenses, but I would hate to guess that far out.

Mr. HANSEN. There are a lot of people who wonder how Panama can make it after the year 2000 without the U.S. subsidy provided for the next 20 years. It appears that the military subsidy of hundreds of millions for base arrangements is one of the ways they're going to do it. It is all very simple—they can then charge rental on bases that they haven't been able to heretofore.

Another question would involve the fact that the Secretary of Defense, through your office, arbitrarily released $10.9 million contrary to congressional instructions for pretreaty readjustments of Army facilities in Panama. This action occurred after there had been a direct rejection of a request for permission by the House Appropriations Subcommittee on Military Construction regarding the possibility of going ahead with realinement work before the treaties were to be implemented as stipulated by the Brooke amendment directing that instruments were not to be exchanged until the March 31, 1979.

In fact, the memos from your agency were very direct in saying this was for treaty implementation.

Is it a regular practice for you to defy a subcommittee of Congress and proceed with something that they have absolutely told you no on?

Secretary ALEXANDER. That's a question that obviously, any way I answer it, I'm doomed. So let me not answer it—or I'll answer it this way:

The Army does not defy Members of Congress, nor committees of the Congress. The history of this, as I believe you know, is the Defense Department consulted with the Southern Command, General McAuliffe, and we construed it to be a necessity under the emergency funds to expend these moneys. There has been, I think, an exchange of correspondence on this——

Mr. HANSEN. Mr. Alexander, where there hasn't even been an opportunity for Congress to act on treaty implementation, and when you assumed in your agency, through the Department of Defense, that you could proceed with treaty implementation before the Congress even acted, how can you justify this course of action, especially when the matter was run before a committee of Congress and you were denied the opportunity pointblank, by the chairman of the Military Construction Subcommittee, Mr. McKay?

I might mention that Governor Parfitt made the same request of another subcommittee chairman, of the Appropriations Committee, and he was also denied. He managed to properly abide by the denial. But here, under your direct jurisdiction, you are making treaty implementation provisions without any authorization from the Congress.

Secretary ALEXANDER. The request was made and followed, I think, according to the powers within the Defense Department, to utilize their $10.9 million within their contingency fund.

Mr. HUBBARD. Thank you so much, Secretary Alexander. We appreciate your presence here today and your good testimony, and answering our questions personally.

As one who has served in the U.S. Army, and only reaching the high rank of captain, I congratulate you on the job you're doing with our Army. I hope you keep up the good work and that you will come back and be with us again

Secretary ALEXANDER. Thank you, gentlemen.

Mr. HUBBARD. Our next witness is the Comptroller General of the United States, the Honorable Elmer B. Staats. Mr. Staats has testified before the subcommittee and several other committees of the Congress on the subject of the Panama Canal, but this will be his first testimony on this particular bill before the House for consideration. The subcommittee will be addressing questions on the substantive and technical financial aspects of the legislation

Welcome, Mr. Staats. We're happy to have you with us.

STATEMENT OF HON. ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES ACCOMPANIED BY FRANK M. ZAPPACOSTA, ASSISTANT DIRECTOR, GAO

Mr. STAATS. Thank you very much, Mr. Chairman. I realize the hour is late, and in the interest of saving the committee's time, I believe I can start my statement on page 8—the material preceding that relates to the question of organization.

Mr. Hubbard. Your entire statement will be included in the record.

Is there any objection? Hearing none, it will be inserted in the record.

[The following was received for the record.]

Statement of Elmer B. Staats, Comptroller General of the United States

Mr. Chairman and Members of the Subcommittee: We appreciate this opportunity to discuss the recently introduced legislation for implementation of the Panama Canal Treaty. A little over a year ago when we testified before the Senate Armed Services Committee, we stated that the treaty-implementing legislation would be the key determinant of the financial viability of the Panama Canal Commission. This is still our view and we, therefore, are gratified that most of our previously expressed concerns have been addressed either in the Senate resolution of ratification or the proposed legislation.

Today, we would like to discuss the fundamental organizational, accounting and financial issues; compare how these issues are dealt with in H.R. 111 and the Administration's bill, H.R. 1716; and offer suggestions for legislative consideration.

WHAT FORM OF ORGANIZATION IS BEST SUITED FOR THE NEW COMMISSION?

As you know, the Panama Canal Company is a government corporation which operates under the provisions of the Government Corporation Control Act. The Administration's bill H.R. 1716 would continue this form of organization for the new Panama Canal Commission. H.R. 111, on the other hand, would organize the Commission as an executive government agency. In our previous testimony, including testimony before this Subcommittee, we recommended that the new Commission be operated as a government corporation. We continue to hold this view. Even though the Commission could operate as an executive agency, the administrative burden and loss of management flexibility involved in a change from a government corporation would not be compensated for by improvement in congressional oversight. Before discussing the specifics which underlie this conclusion, I would like to briefly review the rationale for the 1950 legislation which completed the separation of the business-type and government activities of the Canal organization by creating the present Panama Canal Company and Canal Zone Government.

In 1950 testimony before this Subcommittee, the Bureau of the Budget, now the OMB, took the position that the financial controls generally applicable to government-type programs, such as civil government, health and sanitation were not appropriate for programs which were essentially business operations. BOB noted that the operation of the Canal was a business which produced revenue, was expected to be self-sustaining, and required considerable operating flexibility. The Bureau of the Budget concluded that the business-type budgeting, accounting and auditing provisions of the Government Corporation Control Act were more appropriate for the business of operating the Canal than were the provisions of the Budget and Accounting Act of 1921 under which the Canal organization was then operating. The GAO concurred in this conclusion because we had found that the accounting system was inadequate for determining and presenting revenues, costs and expenses and net profits or losses. The Bureau of the Budget's conclusion was also in line with the Hoover Commission recommendation that

> * * * straight-line business activities be incorporated so as to secure greater flexibility in management and simpler accounting, budgeting and auditing methods.

We believe that the successful operation of the Panama Canal Company since the 1950 legislative changes has demonstrated the appropriateness of the corporate form of organization.

What changes would H.R. 111 require? Section 234 of the bill would require the Panama Canal Commission to establish and maintain its accounts pursuant to the Accounting and Auditing Act of 1950, the basic legislation governing accounting for executive agencies of the government. Under this change, the commission would have to develop an accounting system which would conform to the principles, standards and related requirements prescribed by the Comptroller General for executive agencies. Ths accounting system would include a series of accounts not now maintained by the Panama Canal Company such as appropriation, allotment, and obligation accounts. In addition to requiring the establishment of a new series of accounts designed for executive agencies of the government, H.R. 111 would require the new Commission to continue to maintain the business-type accounting system required of government corporations. The result would be a hybrid accounting system creating additional administrative burden for the Commission.

GAO audits would continue

Both H.R. 111 and H.R. 1716 provide that the General Accounting Office shall audit the Panama Canal Commission. The Administration's bill, H.R. 1716 would allow for commerial type audits under the Government Corporation Control Act. H.R. 111, however, requires a two-pronged audit. Section 236(a) of the bill requires a GAO audit pursuant to the Accounting and Auditing Act of 1950, while Section 236(b) requires that our report be in the form of an audit report for a government corporation. In fact, the language of this subsection is virtually identical to Section 106 of the government Corporation Control Act which specifies what should be included in audit reports for government corporations. In essence, these sections would require GAO to audit the Commission in accordance with standards established for government agencies and for government corporations. From an audit and reporting standpoint, this requirement would increase the complexity and degree of GAO's involvement.

Before leaving the subject of audits, we would like to note several other differences between our current audits of the Panama Canal Company and the provisions of H.R. 111. First, the Company is now required to reimburse GAO for our audits; H.R. 111 does not provide for reimbursement. Second, H.R. 111 would require annual audits with a report to the Congress no later than 6 months after the end of the fiscal year. Under a 1975 amendment to the Government Corporation Control Act, GAO is required to audit each corporation at least once in every 3 years. At the present time, we are conducting the majority of the examinations required by the Act on a biennial basis which has proved to be satisfactory. Our last audit of the Panama Canal Company covered the fiscal periods 1977, transition quarter, and 1976. Because of the financial significance of the Treaty, we are following up this audit with an audit of fiscal 1978. After the first few years under the new organization, however, biennial audits may again be satisfactory.

Would a change in organization improve congressional oversight?

Since the creation of the Panama Canal Company the Corporation's activities have been under the same form of congressional oversight as the approximately 100 government corporations now in existence. The Company's budget is reviewed annually by the Office of Management and Budget and the cognizant authorization and appropriation committees of Congress. No funds have been appropriated for the Company; instead, the Company is authorized to use funds and the $40 million borrowing authority available to it. The Company's budget, however, is subject to the imposition of limitations on spending. For instance, the fiscal 1979 budget limits general and administrative expenses to $31.3 million and the purchase of passenger motor vehicles to 48. The current procedures afford the Company managerial flexibility to adjust the level of operations and expenditures on the basis of business experience. To date, the Company has been self-sustaining and has not used its borrowing authority.

H.R. 111 would require existing funds and future revenues to be deposited in the general fund of the Treasury. Expenses would be met by annual appropriations. In addition, the Commission would be authorized to draw on a $10 million emergency fund to be established in the Treasury to defray emergency expenses and to insure continous operation of the Canal. In essence, congressional oversight and control would revert to the system which existed prior to the creation of the Company.

We think that these changes are unnecessary and that there is adequate congressional oversight and control under the existing system for reviewing the Company's activities. There is now ample opportunity for congressional modifications and limitations to the Company's annual budget. We are wary of a reversion to the old system which unduly restricted managerial flexibility and which failed to emphasize management responsibility for self-sustaining, business-like operations. Under the changes proposed in H.R. 111, there could be an erosion of management responsibility and a temptation to subsidize operation of the Canal through appropriations. For these reasons, we would prefer to see the Panama Canal Commission organized as a government corporation subject to the existing system of congressional oversight and control.

SHOULD THE UNITED STATES FORGO INTEREST PAYMENTS AND RECOVERY OF ITS INVESTMENT?

As we have previously testified, the questions of whether the United States continues to receive interest payments and also attempts to recover its investment are policy questions which should be decided by implementing legislation. These decisions will have significant financial implications for the new Commission, future toll rates and U.S. consumers and taxpayers.

From inception, interest has been charged on the U.S. investment in the Panama Canal enterprise. When the present organization was established in July 1951, interest charges were continued for the Panama Canal Company but not for the investment in the Canal Zone Government. As of September 30, 1978, the U.S. investment in the equity of the Panama Canal enterprise was $589.8 million. Of this amount only $318.9 million was considered to be interest-bearing. The remainder, which has been legislatively determined to be non-interest bearing, consists of reinvested earnings ($187.3 million), investment in the Canal Zone Government ($65.4 million) and the Thatcher Ferry Bridge ($18.1 million). *BAD MAG TAPE**ERR01*

The applicable rate of interest is determined by the Secretary of the Treasury and under present practice it is the computed average coupon rate on outstanding bonds as of July 31 of each year. For fiscal 1978, the rate was 6.071 percent and interest payments were $19.3 million. Since interest payments are an operating cost for the Panama Canal Company, toll rates have been set to recover this cost.

Under Senate Reservation 6 to the Panama Canal Treaty, the Panama Canal Commission would continue to pay interest, at a rate determined by the Secretary of the Treasury, unless new legislation provides otherwise. By eliminating the requirement to pay interest, the Administration's bill, H.R. 1716, would reduce the Commission's operating costs and relieve some of the pressure to increase toll rates. But it also would reduce Treasury receipts and, thereby, ancrease the burden on U.S. taxpayers. H.R. 111, on the other hand, would retaan intejest payments to the Treasury at the expense of higher Canal operatang costs and toll rates Highej toll jates ho e ej, have an impact m U.S. cati ens as pjoducers an consumers by adding to the cost of goods shipped through the Canal. E

Concerning recovery of the U.S. investment, the evisting practices differ between the Panama Canal Company and Canal Zone Government The Company repays invested capatal only throueh dividends declared by the Board of Directors. The Comnany has repaid $40 million in dividends since its incorporation. The capital invested in the Canal Zone Government, however, is being systematically repaid. Its operating cost and capital programs are initially financed by appropriations. The government charges users for services and pays the revenues into the Treasury. The difference between these revenues and expenses including depreciation, which is the net cost of the government, is then paid into the Treasury by the Company. Therefore, the entire costs of the government, including the capital investment, are being recovered.

Section 412(b) of H.R. 111 includes amortization of the U.S investment as a cost to be included in the toll base in addition to depreciation. This cost representing accelerated depreciation of assets, however, is excluded from the calculation of the annual $10 million contingent surplus payment to Panama called for in Article XIII, 4(c) of the treaty. Therefore, if the Commission's revenues met all costs including the accelerated depreciation of assets, Panama would be assured of receiving the $10 million contingent surplus payment. The United States would retain annual amounts above $10 million and, thereby, recoup only a portion of its investment. Obviously, if the intent of H.R. 111 is to recover the U.S. investment then the accelerated depreciation charges should be included both in the toll base and as an element of cost for the calculation of the contingent surplus payment.

The Administration's bill, H.R. 1716 would continue the existing practice of not requiring the recovery of the U.S. investment in Canal except through dividends. Under the treaty, however, dividends could be paid only after the $10 million contingent surplus payment to Panama.

It is not clear from our analysis of the studies prepared by the Company or the executive branch that toll rates can be raised high enough to cover *both* interst payments and complete recoupment of the U.S. investment. There is a practical limit to toll rate increases beyond which total earned revenues would fall as traffic would be divereted to alternative shipping methods and new trading patterns would emerge. Last year, Governor Parfitt expressed concern about the long-range ability to raise toll rates to cover projected costs. His conern was based on anticipated cost inflation and foreseeable drop in North Slope oil traffic because of alternative pipeline development. Because of the uncertainty about the Canal's long-range revenue potential, we think it may be diffcult to recover the U.S. investment through accelerated depreciation charges which would significantly increase toll rates closer to the point of diminishing returns. On the other hand, the Canal has historically generated adequate revenues to pay interest on the U.S. investment.

Existing legislation requires the Panama Canal Company to make annual interest payments to the Treasury to the extent earned. If not earned in any given year, interest payments shall be made from subsequent earnings unless the Congress otherwise directs. We believe that these provisions should be incorporated in the treaty-implementing legislation and that interest payments should be specifically considered an operating expense in the calculation of the $10 million contingent payment to Panama. The implementing legislation should also address the possibility of any unpaid interest liability upon termination of the treaty.

Based on the current value of the interest-bearing investment, and the applicable rate of interest for fiscal year 1978, interest payments over the life of the treaty would amount to about $400 million. This is only a rough projection. The actual annual amounts and cumulative total would depend on the value of the interest-bearing investment after property transfers to other U.S. Government agencies and to Panama and on the applicable rates of interest which are determined each year.

WHAT TREATY RELATED COSTS HAVE BEEN IDENTIFIED?

Costs associated with the Panama Canal Treaty have been the subject of considerable discussion in testimony before your Committee and other Committees of the Congress. We would like to highlight some of the costs, *excluding* the additional treaty-specified payments to Panama of about $60 million each year (that will result in increased toll payments by users), which we believe are directly or indirectly related to the Treaty and will be borne by U.S. Government agencies unless otherwise legislated. Some of these costs have been estimated for the life of the treaty while other costs are stated on an annual basis because they would vary widely each year. Therefore, it is not possible to accurately estimate the total cost. At a minimum, however, the cost would be about $399 million. If the Commission is not required to pay interest on the U.S. investment, there would be additional costs of about $20 million each year, or approximately $400 million over the treaty lifetime.

The estimated costs would include:

Early optional retirement payments estimated at $270 million.

Severance pay liability estimated at $3.5 million for employees losing their jobs.

Defense relocation and other costs were originally estimated at $43 million. The current estimate for the first 5 years is $88 million. This estimate includes treaty-related construction to be completed by October 1, 1979, estimated at $10.9 million.

Discharging the existing accrued annual leave and repatriation liability for employees scheduled for transfer to DOD is estimated at $6.3 million for leave and $3.7 million for repatriation. DOD would have to request appropriations for payment of these liabilities if no funds are transferred. We recommend that the implementing legislation specifically require the Commission to transfer the necessary funds either to DOD or to the Treasury. If this authority is not provided for by legislation, then the Commission would be relieved of this liability, thereby, increasing the Commission's income.

Loss on retail store inventories estimated at $2 million.

Disinterment and reinterment of remains of United States citizens estimated at $1.7 million.

General and administrative expense associated with a reduction in force and related activities estimated at $1.8 million.

Cost for health services by DOD estimated at $32 million direct funding less recoveries of $10 million, net cost $22 million.

State Department personnel costs associated with Embassy consular activities for visas and passports estimated for fiscal year 1980 at $184,100.

Other identified costs for which estimates are not available are:

Additional educational costs for dependents of the estimated 2,600 employees transferring to the Department of Defense.

Adjustment of compensation for the loss of exchange and commissary benefits after 5 years by U.S. citizen employees of the Panama Canal Commission.

Concerning retirement costs, we would like to add that both H.R. 111 and H.R. 1716 would establish a special early retirement program for employees who leave government service, either voluntarily or involuntarily, and provide higher than normal retirement benefits for those who stay off. We have been asked by the House Post Office and Civil Service Committee's Subcommittee on Compensation and Employee Benefits to analyze each of the provisions that would add to the retirement system's liability with particular attention on their justification and cost.

Our analysis is currently in process. The Office of Personnel Management's initial rough estimate of the added retirement outlays is $9 million a year for 30 years which is an unfunded liability of $270 million. The Office is now preparing a more precise estimate which we will be evaluating.

HOW SHOULD THE COMMISSION'S ASSETS BE VALUED?

Both H.R. 1716 and H.R. 111 provide for the depreciation of assets, but neither bill states the basis to be used for the valuation of the assets assumed by the Commission. Annual depreciation charges would be an expense to be recovered through tolls and also would be included in the calculation of the contingent payment to Panama. To avoid any misunderstanding by all parties concerned, we believe that the implementing legislation should establish the basis for valuation of assets.

By way of background, when the present Panama Canal Company was established in 1951, the Company's charter prescribed the criteria for valuation of the transferred property. The original cost of $634.7 million was adjusted for defense costs, interest during original construction, suspended construction projects, accrued depreciation and an economic valuation allowance, making the net transfer value $402.1 million. The transfer value was approved by the Bureau of Budget and accomplished in three stages, February 1, 1950, July 1, 1950, and July 1, 1951, or about 1½ years. The valuation and inventory process which cost about $750,000 required the creation of a special staff of engineers and accountants.

The assets to be transferred to Panama and U.S. Government agencies at varying times, as well as those to be assumed by the Panama Canal Commission, are now stated at net book value which is cost less depreciation and allowances. We recognize that other bases of valuation, such as current and replacement costs, can be applied to these assets. The revaluation of assets, however, would involve the substitution of another basis and identification of the assets that would continue to be used in operations and those to be disposed of or retired. This would be accomplished through a detailed inventory which we have advocated in prior testimony. We understand that the Company is presently in the process of inventorying only those assets to be transferred to Panama. Although we have not fully analyzed the alternative methods of valuing the assets to be transferred to the Commission we believe that until some operating experience has been gained, for the transition period at least, the most expedient and preferred method would be to make the transfer at book value when the Treaty goes into force on October 1, 1979.

In closing, we would like to comment on three other matters—amortization of the "Use-rights," the Panama Canal Emergency Fund and the administration of payments between the United States and Panama—which may require some revisions to the implementing legislation.

Amortization of use rights

Both H.R. 111 and H.R. 1716 provide for the amortization of the U.S. rights to use certain assets. Ownership of these assets, principally housing, will be transferred to the Republic of Panama on October 1, 1979, but the United States will continue to use them as the need exists. It is not possible to establish an exact value for the right to use a particular house because the United States may relinquish its use-right at any time during the treaty. Therefore, the Company's proposed policy is to establish the use-right value at the net book value of the assets at September 30, 1979, and amortize the asset at the same annual dollar value as they were depreciated under the Panama Canal Company. Since these amortization charges will be considered operating costs of the Commission, they should be included in the toll base. We note that there is a possible oversight in H.R. 111 in that amortization charges for use-rights are specifically mentioned in Section 234 as an expense but Section 412(b) of the bill fails to include it as a cost to be recovered through tolls.

Panama Canal emergency fund

The Panama Canal Company has the authority to borrow up to $40 million from the Treasury for any purpose. H.R. 1716 would continue the borrowing authority for the Commission. H.R. 111, however, would replace this authority with an Emergency Fund on which the Commission could draw. There may be some confusion about the amount of the proposed Emergency Fund. Section 233 of the bill stipulates that the fund would be $10 million but the section-by-section analysis mentions a $40 million fund which would be consistent with the existing borrowing authority.

Administration of payments between the United States and Panama

The treaty stipulates certain annual amounts which the United States shall pay to Panama but does not specify whether payments may be made semi-annually, quarterly or more frequently. The treaty also provides for reimbursement of each party for services rendered. For example, the United States shall reimburse

Panama for railway shipments and Panama shall pay for utility services which the United States continues to provide. The treaty, however, does not provide detailed guidance on the administration of these payments.

We think that the treaty implementing legislation should address the question of frequency of payments because of the cash flow implications for the United States. Neither H.R. 111 or H.R. 1716 specifically cover this question.

Section 251 of H.R. 111 does provide that Panama's payments to the Commission may be offset against amounts due the Republic of Panama by the United States. From a financial standpoint, an offset of payments appears to be an equitable arrangement.

We also suggest that consideration be given to incorporating Senate Understanding 1 to the treaty in the implementing legislation. This understanding provides a mechanism for establishing the quality of public services to be provided by Panama. The understanding also provides that the United States would pay $10 million for each of the first 3 years. Based on an examination of the actual costs to Panama for providing the services, payments for each of the following 3 years would be adjusted by one-third of any excess or deficit. The procedure would continue through the life of the treaty.

Mr. Chairman and Members of the Committee, this completes our prepared statement. We will be pleased to answer any questions you or members of the Committee may have.

Mr. STAATS. In general, we support the Secretary of the Army, that their organization is desirable. We don't think it diminishes in any way the congressional oversight role. And our audit authority would be continued.

I would first like to address the question of interest payments, on the interest-bearing investment, and on the question of the recovery of the investment itself.

As we have previously testified, the questions of whether the United States continues to receive interest payments and also attempts to recover its investment are policy questions which should be decided by implementing legislation. These decisions will have significant financial implications for the new Commission, future toll rates, and for U.S. consumers and taxpayers.

From inception, interest has been charged on the U.S. investment in the Panama Canal enterprise. When the present organization was established in July 1951, interest charges were continued for the Panama Canal Company but not for the investment in the Canal Zone Government.

As of September 30, 1978, the U.S. investment in the equity of the Panama Canal enterprise was $589.8 million. Of this amount, only $318.9 million was considered to be interest bearing. The remainder, which has been legislatively determined to be noninterest bearing, consists of reinvested earnings of $187.3 million, investment in the Canal Zone Goverment of $65.4 million, and the Thatcher Ferry Bridge, $18.1 million.

The applicable rate of interest is determined by the Secretary of the Treasury and under present practice it is the computed average coupon rate on outstanding bonds as of July 31 of each year. For fiscal 1978, the rate was 6.071 percent and interest payments were $19.3 million. Since interest payments are an operating cost for the Panama Canal Company, toll rates have been set to recover this cost.

Under Senate Reservation 6 to the Panama Canal Treaty, the Panama Canal Commission would continue to pay interest, at a rate determined by the Secretary of the Treasury, unless new legislation provides otherwise. By eliminating the requirement to pay interest, the administration's bill, H.R. 1716, would reduce the

Commission's operating costs and relieve some of the pressure to increase toll rates. But it also would reduce Treasury receipts and, thereby, increase the burden on U.S. taxpayers.

H.R. 111, on the other hand, would retain interest payments to the Treasury at the expense of higher canal operating costs and toll rates. Higher toll rates, however, have an impact on U.S. citizens as producers and consumers by adding to the cost of goods shipped through the canal.

We believe that only about 30 percent of the canal traffic is destined to U.S. ports. The remainder is destined to other nations' ports.

Concerning recovery of the U.S. investment, the existing practices differ between the Panama Canal Company and the Canal Zone Government. The Company repays invested capital only through dividends declared by the Board of Directors. The Company has repaid $40 million in dividends since its incorporation.

The capital invested in the Canal Zone Government, however, is being systematically repaid. Its operating cost and capital programs are initially financed by appropriations. The Government charges users for services and pays the revenues into the Treasury.

The difference between these revenues and expenses, including depreciation, which is the net cost of the Government, is then paid into the Treasury by the Company. Therefore, the entire costs of the Government, including the capital investment, are being recovered.

Section 412(b) of H.R. 111 includes amortization of the U.S. investment as a cost to be included in the toll base in addition to depreciation. This cost representing accelerated depreciation of assets, however, is excluded from the calculation of the annual $10 million contingent surplus payment to Panama called for in article XIII, 4(c) of the treaty.

Therefore, if the Commission's revenues met all costs, including the accelerated depreciation of assets, Panama would be assured of receiving the $10 million contingent surplus payment. The United States would retain annual amounts above $10 million and, thereby, recoup only a portion of its investment.

Obviously, if the intent of H.R. 111 is to recover the U.S. investment, then the accelerated depreciation charges should be included both in the toll base and as an element of cost for the calculation of the contingent surplus payment.

The administration's bill would continue the existing practice of not requiring the recovery of the U.S. investment in the canal, except through dividends. Under the treaty, however, dividends could be paid only after the $10 million contingent surplus payment to Panama.

It is not clear from our analysis of the studies prepared by the Company or the executive branch that toll rates can be raised high enough to cover both interest payments and complete recoupment of the U.S. investment.

There is a practical limit to toll-rate increases beyond which total earned revenues would fall as traffic would be diverted to alternative shipping methods and new trading patterns would emerge.

Last year Governor Parfitt expressed concern about the long-range ability to raise toll rates to cover projected costs. His concern was based on anticipated cost inflation and foreseeable drop in North Slope oil traffic because of alternative pipeline development. Because of the uncertainty about the canal's long-range revenue potential, we think it may be difficult to recover the U.S. investment through accelerated depreciation charges which would significantly increase toll rates closer to the point of diminishing returns. On the other hand, the canal has historically generated adequate revenues to pay interest on the U.S. investment.

Existing legislation requires the Panama Canal Company to make annual interest payments to the Treasury to the extent earned. If not earned in any given year, interest payments shall be made from subsequent earnings unless the Congress otherwise directs.

We believe that these provisions should be incorporated in the treaty-implementing legislation, and that interest payments should be specifically considered an operating expense in the calculation of the $10 million contingent payment to Panama. The implementing legislation should also address the possibility of any unpaid interest liability upon termination of the treaty.

Based on the current value of the interest-bearing investment, and the applicable rate of interest for fiscal year 1978, interest payments over the life of the treaty would amount to about $400 million. This is only a rough projection. The actual annual amounts and cumulative total would depend obviously on the value of the interest-bearing investment after property transfers to other U.S. Government agencies and to Panama and on the applicable rate of interest which is determined each year. But I think as a rough measure, the $400 million figure is a good figure.

Costs associated with the Panama Canal Treaty have been the subject of considerable discussion in testimony before your committee and other committees of the Congress. We would like to highlight some of the costs, excluding the additional treaty—specified payments to Panama of about $60 million each year—that will result in increased toll payments by users, of course—which we believe are directly or indirectly related to the treaty and will be borne by the U.S. Government agencies unless otherwise legislated.

Some of these costs have been estimated for the life of the treaty, while other costs are stated on an annual basis, because they could vary widely each year.

Therefore, it is not possible to accurately estimate the total cost. At a minimum, however, the cost would be about $399 million. If the Commission is not required to pay interest on the U.S. investment, there would be an additional cost of about $20 million each year, or approximately $400 million over the treaty lifetime. These two figures added together are about $800 million.

The estimated costs would include: early optional retirement payments, estimated at $270 million; severance pay liability, estimated at—that figure should be $4.6 million—for employees transferring to Panama or losing their jobs; defense relocation and other costs were originally estimated at $43 million. The current estimate for the first 5 years is $88 million. This estimate includes treaty-related construction to be completed by October 1, 1979, estimated at $10.9 million.

Discharging the existing accrued annual leave and repatriation liability for employees scheduled for transfer to DOD is estimated at $6.3 million for leave and $3.7 million for repatriation. DOD would have to request appropriations for payment of these liabilities if no funds are transferred.

We recommend that the implementing legislation specifically require the Commission to transfer the necessary funds either to DOD or to the Treasury. If this authority is not provided for by legislation, then the Commission would be relieved of this liability, thereby increasing the Commission's income.

Loss on retail store inventories are estimated at $2 million; disinterment and reinterment of remains of U.S. citizens is estimated at $1.7 million; general and administrative expense associated with a reduction in force and related activities is estimated at $1.8 million.

The cost for health services by DOD is estimated at $32 million direct funding, less recoveries of $10 million, with a net cost of $22 million.

The State Department personnel costs associated with Embassy consular activities for visas and passports are estimated for fiscal year 1980 at $184,100.

Other identified costs for which estimates are not available are: Additional educational costs for dependents of the estimated 2,600 employees transferring to the Department of Defense; the adjustment of compensation for the loss of exchange and commissary benefits after 5 years by U.S. citizen employees of the Panama Canal Commission.

Concerning retirement costs, we would like to add that both H.R. 111 and H.R. 1716 would establish a special early retirement program for employees who leave Government service, either voluntarily or involuntarily, and provide higher than normal retirement benefits for those who stay.

We have been asked by the House Post Office and Civil Service Committee's Subcommittee on Compensation and Employee Benefits to analyze each of the provisions that would add to the retirement system's liability with particular attention to their justification and cost.

Our analysis is currently in process. The Office of Personnel Management's initial rough estimate of the added retirement outlays is $9 million a year for 30 years, which is an unfunded liability of $270 million. The Office is now preparing a more precise estimate which we will be evaluating. That $270 million is a part of the $399 million figure that I mentioned earlier.

The question we would like to address now is how should the Commission's assets be valued. Both bills provide for the depreciation of assets, but neither bill states the basis to be used for the valuation of the assets assumed by the Commission. Annual depreciation charges would be an expense to be recovered through tolls, and also would be included in the calculation of the contingent payment to Panama. To avoid any misunderstanding by all parties concerned, we believe that the implementing legislation should establish the basis for valuation of assets.

By way of background, when the present Panama Canal Company was established in 1951, the company's charter prescribed the criteria for valuation of the transferred property. The original cost of $634.7 million was adjusted for defense costs, interest during original construction, suspended construction projects, accrued depreciation and an economic valuation allowance, making the net transfer value of $402.1 million.

The transfer value was approved by the Bureau of the Budget and accomplished in three stages, or in a period of about 1½ years. The valuation and inventory process, which cost about $750,000, required the creation of a special staff of engineers and accountants.

The assets to be transferred to Panama and U.S. Government agencies at varying times, as well as those to be assumed by the Panama Canal Commission, are now stated at net book value, which is cost less depreciation and allowances.

We recognize that other bases of valuation, such as current and replacement costs, can be applied to these assets. The revaluation of assets, however, would involve the substitution of another basis and identification of the assets that would continue to be used in operations and those to be disposed of or retired.

This would be accomplished through a detailed inventory which we have advocated in prior testimony. We understand that the Company is presently in the process of inventorying only those assets to be transferred to Panama. Although we have not fully analyzed the alternative methods of valuing the assets to be transferred to the Commission, we believe that until some operating experience has been gained for the transition period at least, the most expedient and preferred method would be to make the transfer at book value when the treaty goes into force on October 1, 1979.

In closing, we would like to comment on three other matters—amortization of the use rights, the Panama Canal emergency fund, and the administration of payments between the United States and Panama—which may require some revisions to the implementing legislation.

Both bills provide for the amortization of the U.S. rights to use certain assets. Ownership of these assets, principally housing, will be transferred to the Republic of Panama on October 1, 1979. But the United States will continue to use them as the need exists.

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Section 251 of H.R. 111 does provide that Panama's payments to the Commission may be offset against amounts due the Republic of Panama by the United States. From a financial standpoint, an offset of payments appears to be an equitable arrangement.

We also suggest that consideration be given to incorporating Senate understanding 1 to the treaty in the implementing legislation. This understanding provides a mechanism for establishing the quality of public services to be provided by Panama.

The understanding also provides that the United States would pay $10 million for each of the first 3 years. Based on an examination of the actual costs to Panama for providing the services, payments for each of the following 3 years would be adjusted by one-third of any excess or deficit. The procedure would continue through the life of the treaty.

This completes our prepared statement, Mr. Chairman. Mr. Zappacosta, to my left here, and I would be glad to respond to any questions you have.

Mr. HUBBARD. Thank you very much, General Staats.

The Members of the House have a conflict, and we would ask you to please bear with us and understand that we have 10 rollcall votes. This one now is 15 minutes in duration, and following that we have nine more of 5 minutes each. So there is no way we can meet earlier than 3 o'clock to reconvene.

The best we can do is recess at this point.

Mr. STAATS. Would you like for us to come back at 3?

Mr. HUBBARD. Please. And also Mr. Carswell, please; 3 o'clock is the earliest possible time we could reconvene.

[Whereupon, at 12:35 p.m., the subcommittee was in luncheon recess, to reconvene at 3 p.m. the same day.]

AFTERNOON SESSION 3:11 P.M.

Mr. HUBBARD. The subcommittee will again come to order. Our apologies for the delay caused by 10 rollcall votes in the House.

[Buzzer sounds.]

Let's assume that's going to be adjournment. Four bells will be good news in this regard.

And so it is.

Mr. Staats, to the questioning now, if you would, please.

In 1977 testimony before this subcommittee, you advocated a corporate form for the Panama Canal Commission, but you also stated: "New capital budgets should receive close scrutiny by the administration and Congress to insure that only essential capital investments are made."

Doesn't the need to scrutinize the capital program lend itself toward an appropriated-fund agency?

Mr. STAATS. Mr. Zappacosta will——

Mr. HUBBARD. Sure, Mr. Zappacosta?

Mr. ZAPPACOSTA. Not necessarily, Mr. Chairman. You could actually scrutinize the capital program under the normal corporate type of structure. If the Congress so desired, they could place the limitations on the capital expenditures.

Incidentally, we reviewed the capital program and issued a report on May 11, 1977; we looked at the 5-year plan. But in the budget review process this could be done—it could be done either way. There's no definite reason it has to be in appropriated form in order to have the controls.

Mr. STAATS. Mr. Chairman, the reason we stress this point—it's a particularly important point that if legislation does not require repayment of the unpaid capital investment, then we think you ought to look at any new capital improvements pretty carefully here in the Congress from the point of view of turning over the Canal in the year 2000.

It would be an important point either way, but it would be particularly important if there was no provision made in the legislation for repayment of the capital investment.

Mr. HUBBARD. Thank you. Governor Parfitt, in his statement, talks of a tolls surcharge on vessels in order to help finance the capital program for the Commission.

What financial restraints would you recommend be tied to the disposition of any surcharge imposed?

Mr. ZAPPACOSTA. Well, if you are going to impose any surcharge for capital improvements, then the surcharge would have to be specifically earmarked for that purpose—if that is what the surcharge is going to be.

Mr. STAATS. I'm not clear what a surcharge would achieve that you could not achieve by accelerated depreciation arrangements.

The line that has to be drawn here is what kind of improvements are necessary to operate the canal as long as we have the responsibility for it, and to turn over the operation in an operable condition in the year 2000, as against improvements that may not be essential for that purpose.

That is, again, one of the reasons that we felt that the Congress ought to give special scrutiny to new capital investment.

Let me say this additionally. With respect to the corporate form historically—and this is true of all government corporations—Congress can impose in any year any restriction it wants to impose on the operations of the corporation—and this in fact is done. There are administrative cost limitations, limitations on capital improvements by the Congress—but unless the Congress does that in some restrictive way, then it goes ahead and is operated by the Board of Directors.

But that opportunity is always present on any government corporation in the annual budget review.

Mr. HUBBARD. Has the General Accounting Office had any discussions with the Government of Panama or the Panamanian comptroller general as to the transfer of property or financial arrangements under the treaty?

Mr. STAATS. No we have not. We have indicated to the Ambassadors, former Ambassador Jorden and Ambassador Moss, that should it be indicated that this could be useful in any sense to the Panamanian Government, we would be happy to cooperate with the Comptroller General of Panama.

But we thought it would be better to leave it that way and leave it at their initiative rather than our volunteering directly a role which they might not appreciate.

Mr. HUBBARD. Would you tell us now about your assessment of the progress made by the Panama Canal organization in preparing for the entry into force of the new treaty arrangement. More specifically, has the complete inventory of assets you recommended in 1977 been accomplished?

Mr. STAATS. No, it has not been accomplished. I would like Mr. Zappacosta to elaborate on that.

We renewed that suggestion in the statement which I presented here earlier today.

Mr. ZAPPACOSTA. Actually, Mr. Chairman, the inventory is in process. The policy of the company has been a multiphased type of operation.

The first basic thing they are doing is to actually inventory the assets for the activities that are going to be turned over either in whole or in part to the Republic of Panama or will be going over to DOD or any other Government agency.

The rest of the assets are not being inventoried at this time, based on our understanding; it is still in process—it has not been completed, according to our information.

Mr. STAATS. And there remains the question of how you value those assets that we refer to in our statement.

Mr. HUBBARD. Has identification of property to be turned over been made?

Mr. ZAPPACOSTA. Well, that would be part of the process of the inventory. Actually, I think that is going to be done once you have taken the inventory, then it will be necessary to make a specific identification with the provisions of the treaty.

Mr. HUBBARD. Do you have any suggestions as to provisions that should be placed in this implementing legislation we seek to pass, to make sure that everything has been properly done by October 1?

Mr. STAATS. Are you referring to the facts of what should be done in the taking of the inventory or the valuing of the assets?

Mr. HUBBARD. Both.

Mr. ZAPPACOSTA. Well, we advocated that once before. We felt that a complete inventory should be taken, because you are going to start off with a new type of operation. However, in 1951 the last inventory that was taken, the last complete inventory, cost somewhere in the neighborhood of $750,000 and required a staff of about 54 engineers and accountants to do it.

At today's prices it would probably cost you somewhere in the neighborhood of maybe $1 or $2 million. It's hard to say.

But if you are going to have a sound basis to start from, from an accounting standpoint, you should have a complete inventory. But at least a half a loaf is better than none. If you are going to at least inventory the assets that are going over to Panama—when the treaty enters into force, then you should put in a procedure whereby you will periodically review and take inventories—have your own internal audit organization to do that. In our annual audit we make test checks. Then I think you would have a pretty good fix on it.

Mr. HUBBARD. Lastly, I gather from your comments, Mr. Staats, on page 6 of your testimony you think that in the initial years of the Commission's existence whether as a corporation or an appropriated fund agency, there would be a need for an annual audit in order to insure that funds are being spent properly; is that correct?

Mr. STAATS. That's our present view on the matter; yes, sir.

Mr. HUBBARD. Congressman Bauman.

Mr. BAUMAN. Mr. Staats, you placed before us several arguments in favor of retaining the corporate form of the company's operations. Let me relate to you my own view, which is essentially a political problem that I have with that continuation.

It appears to me from all that I have heard in these hearings and from the reading that I have done on the treaty negotiations and the text itself, that the commission form of government lends itself very easily to the appointment of people whose sympathies don't necessarily lie with perhaps the majority of the Congress as to the manner in which the canal should be run in the next 20 years.

Already we have had a number of indications that the State Department is in fact working against even provisions of the treaty, advising the Panamanians to make claims for property that the treaty clearly doesn't give them. In this atmosphere, it doesn't lend much confidence to people like myself that we continue the corporate form that indeed does give flexibility which now ought to be denied.

Would it be possible, do you think, to continue the corporate form and impose upon it an annual appropriations process out of the revenues of the canal, which would be earmarked in the U.S. Treasury, so that there would be no question about the amount of income and the amount of expenses—an earmarked fund, but subject to annual appropriation in advance—and graft onto that fund an emergency procedure—or perhaps not even an emergency procedure—but a procedure for contingencies, something like we have in the Trade Act where they could submit requests to the appropriate committees of the Congress and within a certain time, if no action was taken, say 30 days, they would be able to spend the money for that unforeseen purpose.

I think you see what I am driving at.

Mr. STAATS. Yes.

Mr. BAUMAN. And I see no other way to solve this, because we have no influence over appointees to the Commission, and I frankly have no confidence at all that they will carry out the will of the Congress.

Mr. STAATS. Well, let me respond in two parts. First, certainly you could write a statute along the lines that you have indicated, and that would be the manner in which the usual operating agency of the executive branch would be financed by appropriations. Revenues which it generated go to the Treasury and the Congress appropriates a certain amount each year.

The reason we came out where we did is that the Panama Canal is a utility-type operation; it's a business-type operation. And you cannot foresee what the volume changes may be during the course of the year—no one can.

So there has to be some flexibility there, and if you were to write it in the form of an appropriated agency, then I think you would inevitably want to give it flexibility, from the operating point of view, and you would have to take into account the fluctuating nature of the business that is involved here.

The counter to that is that we feel that, even with the corporate form, as proposed, the Congress has an opportunity to review the operations and impose whatever controls and restrictions they want under the Corporation Control Act.

I guess we would prefer to see you do it in that way. The review is made, of course, by the Appropriations Committee, but there is no reason why there could not be an annual review by this committee as well.

So we don't really see that the Congress loses in terms of oversight and direction by virtue of having the corporate-type organization which is contemplated in the proposed legislation.

And, in addition, we will be doing more than just a financial audit. As the chairman suggests, we would contemplate that we would do a financial audit annually for at least a period of time. At the present time, we have discretion to make either an annual audit or an audit within a 3-year time frame on all Government corporations.

But in this case we would undoubtedly want to make an annual audit.

But in addition to that we are available to respond to the requests of the committee, to review any particular aspect of the operation. And we would be more than pleased to respond to such a request that would come from this committee.

Mr. BAUMAN. I have no doubt of that, but all of the provisions that you describe as now being available to us constitute oversight after the fact, constitute an assessment of what has been done.

What I am looking for is a projection, at least on an annual basis, and a justification of the Commission's operations. It seems to me that under the Government Corporation Control Act, we have little more than oversight. And in fact such corporations are given the right to act, for instance, without reference to the fiscal year limitations.

Mr. STAATS. I think you can go beyond that. I think you can, as we suggest in our earlier testimony, that you can put a limitation on capital improvements, and types of improvements. That could be written right into the annual review of their budget.

And you can put a limitation on administrative costs.

There is no limit in the Corporation Control Act as to the kind of restrictions that the Congress may choose to write.

And that is in advance, rather than hindsight.

Mr. BAUMAN. I don't understand in the absence of a specific appropriation bill being reported or an authorization bill annually, we could write such restrictions into the law unless it were a separate piece of legislation, which would immediately be vetoed by the President, since it would not be grafted upon any appropriation bill where the force would be to go ahead and sign it despite the restriction.

In other words, if the administration is of a mind to implement this treaty as the Panamanians want to, as they apparently are now, we would never have any real control. Sure, we could try, but it wouldn't get out of committee, or if it came to the floor and passed both Houses, which is unlikely, it would be vetoed.

So we are caught in a bind.

Mr. STAATS. Well, your judgment on that might be at least equally as good as mine, but in the past there has been a long history of Congress placing restrictions on corporations—in advance—through the appropriations process.

And I wouldn't want to speculate what this President or any other President might do.

Mr. BAUMAN. I am aware of that history, but I just think we have reached a point in the history of this particular facility, which is, of course, unparalleled, and we have to assume the worst, it seems to me, based on our past relations with Panama—not the worst in the sense that everything's going to go wrong, but the worst in the sense that the Congress will probably lose a large measure of the control it had in the past.

So I appreciate your thinking on it.

Let me ask you, if I may, Mr. Chairman—you have given us a rather extensive estimate of the cost of the implementation of the treaty, and if no other testimony should lay to rest the song that it was not going to cost the taxpayers $1, this certainly has.

But did you also include in the new-rated items the operating costs of the Department of Defense on an annual and cumulative basis for the life of the treaty? It's my impression that I didn't see that in there; you talked about the military construction figures.

Mr. ZAPPACOSTA. No, sir, they are not. These are strictly the military construction costs.

When you mentioned that this morning, Mr. Bauman, in referring to your discussion with General McAuliffe, I was kind of curious as to whether you said it was $80 million per year or whether it was $80 million for the first 5 years into the treaty.

Mr. BAUMAN. Well, Mr. Bonior was present, and my recollection—and it never was really answered squarely—when I asked General McAuliffe at the briefing—his response—I have the figure, entertained the figure—was roughly $60 to $66 million annually to start. The cost to DOD previously had come out of the totals and had been paid by the zone government for the company.

And he said it would be somewhere in the neighborhood of $60 to $80 million—and I think he said $80 million within about 5 years—afterwards he had no projections.

Mr. ZAPPACOSTA. Over and above the construction costs.

Mr. BAUMAN. Yes; you could see why I am interested, because obviously this——

Mr. ZAPPACOSTA. We certainly would be interested in it also, because we'd like to check on it and see exactly what that figure represents.

Mr. BAUMAN. Well, of course, it triples the estimate given in your statement of the cost of implementing procedure.

Mr. ZAPPACOSTA. Right, and basically this is the information we received from SOUTHCOM and also from DOD.

Mr. BAUMAN. So you don't have the operating costs. Perhaps you could provide us a figure for that.

Could you tell me exactly what would be lost if interest is not paid? The interest payments are now deleted there under this legislation.

Mr. ZAPPACOSTA. $400 million—that's a rough estimate.

Mr. STAATS. That's over the period until the year 2000.

Mr. BAUMAN. I also noticed in your statement on page 10—you talk about the contingent payment. Is your reading of the treaty and the projections you have made based on the understanding that Panama has no right nor does the Commission have a right to raise the tolls to meet that contingency, that the contingency is only available if in fact income and expenditures are in such a position that they can pay it, but there is no absolute necessity to project totals for payment?

Mr. STAATS. It's our understanding that this $10 million would be out of surplus. I don't know of any reason, unless the statute specifies otherwise, that they could not raise tolls enough to generate a surplus out of which they could make the $10 million payment.

Mr. BAUMAN. But the treaty standing alone without further elaboration does not require that payment.

Mr. STAATS. That's right. And we raised that question extensively last year in the hearings before this committee and before the Senate. And we received a reply to Mr. Zappacosta here, from the legal advisor of the State Department, a letter which I think would be useful, Mr. Chairman, to your committee, and we would be happy to have it placed in the record.

But it is very explicit on this point that you have raised a question about.

Mr. BAUMAN. Well, the State Department quite obviously has taken that position and continues to take it. However, on Saturday, when we met with officials of the Panamanian Government, as you may know, they very clearly contradicted their view and felt that there was an obligation——

Mr. STAATS. That is precisely the reason we asked the legal advisor to respond to our question, because we, through our office in Panama—we have an office in Panama—had learned about the same question on the part of certain Panamanians as to whether or not $10 million was truly out of surplus or whether it was an obligation to be paid; and, second, whether it would carry over from one year to another so that in the year 2000 any unpaid amount out of the $10 million would then be due and payable from the U.S. Government.

Mr. BAUMAN. What was your estimate on that last point? Is it cumulative and payable?

Mr. STAATS. No. It is our understanding now from the State Department that it would not be cumulative and payable. But we believe it would be wise to have this nailed down, if I might put it in those terms—nailed down in the legislation. Our whole point last year and again this year is that it would not be advisable or wise to leave these issues open to become irritants and problems of misunderstanding later on.

And the implementing legislation is one way, it seems to us, the Congress can exercise its discretion on these matters.

It should not be enough simply to have a communication from the State Department on their understanding, which could be subject to later discussion and negotiation with the Government of Panama.

It seems to us that the wise thing to do would be to have this explicit. And the only way we know how to make it explicit is for the Congress to exercise its discretion and put it in the implementing legislation.

Mr. BAUMAN. Well, Mr. Chairman, like I said, I couldn't more firmly agree with you on that point, and I am doubly convinced over the weekend.

One last question, if I may—I don't want to monopolize the time.

On page 19 you advise us that we should create in the legislation a system governing the frequency of payments. Are you familiar with the fact that the Government of Panama last November sent a letter to U.S. officials, a very brief four-paragraph letter, in which they stated their desire to be paid first of all a $10 million annuity payment annually in advance; and, second, a $10 million contingency payment annually in advance; the 30 cents per canal-ton to be made every 2 weeks; and, last, $10 million for sanitation facilities?

Mr. STAATS. I am not familiar with such a communication and my colleagues here are apparently not either.

Mr. BAUMAN. Well, what does that do to the cash-flow situation, for instance, if every 2 weeks you had to deliver 30 cents per canal-ton, which will now be about $55 million a year?

Mr. STAATS. The payment formula we think could be spelled out in the statutes, and that is what we have recommended.

Mr. BAUMAN. But you have not been privy to any judgment—they haven't asked your judgment on what system of payments should be made?

Mr. STAATS. Not to the best of my knowledge.

Mr. ZAPPACOSTA. Mr. Bauman, we have not seen the letter. In general conversation we were made aware of it, that they wanted some sort of payment other than an annual payment. However, we have not been asked to give our views on it; we haven't even seen the letter.

Mr. BAUMAN. Well, the only reason I raise it now is because General Staats has made this recommendation about frequency of payments, and it seems to me that the Canal Company could be stripped of its ability to respond on a cash basis, if every 2 weeks they have to turn over—for all I know they may want it in cash.

And then what happens to the operation of the canal? We are talking about $55 annually at the current increased rate of tolls.

Mr. STAATS. We say on page 19 of our statement that the treaty stipulates certain annual amounts which the United States shall pay to Panama, but does not specify whether payments may be made semiannually, quarterly, or more frequently. The treaty also provides for reimbursement of each party for services rendered.

Then we go ahead and say we think the treaty-implementing legislation should address the question of frequency of payment because of the cash-flow implications for the United States.

Mr. BAUMAN. Thank you very much. Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Dave Bonior.

Mr. BONIOR. Thank you, Mr. Chairman. Mr. Staats, I didn't have a chance to hear your testimony. I was absent this morning, and I would like to submit some questions to be answered for the record.

Mr. STAATS. Be very happy to respond.

Mr. BONIOR. To follow up, though, on the last point that was raised on page 19—I did peruse the statement in the time that I have been here, and you don't seem to suggest any type of implemental legislation as far as the administration——

Mr. STAATS. Don't seem to be what?

Mr. BONIOR. You didn't suggest—on page 19:

> We think that the treaty-implementing legislation should address the question of frequency of payments because of the cash-flow implications for the United States. Neither bill specifically covers the question.

Are you recommending anything to us for——

Mr. STAATS. I see your question. I have not personally thought about exactly what we would recommend to you to write into the legislation. Mr. Zappacosta may have some suggestions on it. If not, then we will give it some thought, if you would like, and suggest some language to you.

Mr. BONIOR. I think that would be helpful.

Mr. STAATS. We would be happy to do that.

[The following was received:]

SUGGESTED LANGUAGE FOR FREQUENCY OF PAYMENTS

The frequency of payments should consider the operating cash requirements of the Commission, and such payments should not be prepaid. Further, payments should be made according to a schedule mutually agreed to by both parties.

Mr. BONIOR. I have no further questions.

Mr. HUBBARD. Congressman Bill Carney.

Mr. CARNEY. Thank you, Mr. Chairman. On page 12 you talk about the yearly payments to Panama. You say approximately $60 million. I believe the figure that we have been using now is $75 million.

Is there any reason why you have a difference in there? We talked about $55 million in tolls and $10 million.

Mr. ZAPPACOSTA. That's $10 million fixed annuity, about $51 million based on the 1980 budget estimate at 30 cents a ton, less the $2.3 million that you currently pay them. It comes out to about $60 million.

We are saying additional cost right now.

Mr. CARNEY. Well, the figure we have been working with is 75 the last 3 days, and we got that from the Panama Canal Zone.

Mr. ZAPPACOSTA. Well, if you take the $10 million for the fixed plus the $55—you get your $65. Then if you are talking about an additional $10 million for the public service, then, of course, you are going up to that figure.

Mr. CARNEY. OK, I just wanted that clarified. Would you care to estimate what you think the additional military construction cost might be after the 5-year period? I see that you have an estimate for the first 5 years. Would you think that that would become static? We'd have additional military construction costs in the following 15 years.

Mr. ZAPPACOSTA. We don't have anything beyond the estimate for the first 5 years, outside of the fact that we do know that at the end of the treaty there will be some material turned over to Panama, as far as military-type facilities. We think something like in the neighborhood of $353 million.

Mr. CARNEY. Well, that we are aware of. I just was—what I am trying to bring out is for the next 5 years we will have a military construction program estimated to be about $80 million, I believe.

Mr. STAATS. $88 million is the figure we have.

Mr. CARNEY. $88 million. Do you estimate any further military construction program?

Mr. ZAPPACOSTA. We haven't seen any additional estimate.

Mr. CARNEY. Fine, thank you.

Mr. STAATS. This is information that we got from the Defense Department, but, to the best of my knowledge, they have not made a projection beyond the 5-year period.

But we could inquire further.

Mr. CARNEY. I know these are very hypothetical questions.

The figure that we are trying to nail down as best we can is what this is really going to cost the American taxpayer. It seems that every day that we have testimony that figure goes up and up and up. And it's because we can speak to people who have their figure on different costs—so that's why I was pursuing this.

I am trying to get it down to something that I can really feel is a comfortable figure.

The other two additional costs that you cannot identify at this time–would you try to, could you be in a position to give us some sort of idea of what the cost would be to educate those 2,600 dependents?

Mr. STAATS. The item referred to on page 15?

Mr. CARNEY. Yes.

Mr. STAATS. I think we could make an estimate on that.

Mr. CARNEY. Would you be kind enough to provide that for us?

Mr. STAATS. Yes, indeed.

[The following material was received for the record:]

DEPARTMENT OF DEFENSE EDUCATIONAL COST FOR 2,600 DEPENDENTS

The Department of Defense estimate of the educational cost for the dependents of the estimated 2,600 employees transferring to the Department of Defense is not available as of March 14, 1979. We understand, however, that the Department of Defense is presently in the process of preparing their estimate of Treaty-related costs that will include the educational cost, and this information will be incorporated in a state Department reply on cost data.

Mr. BONIOR. Would the gentleman yield on that point?

Mr. CARNEY. Yes.

Mr. BONIOR. We had testimony in Panama concerning the college also, the 2-year college that's run in the Canal Zone.

Could you include the costs on that in terms of at least the transition period, the 36-month period? Or are those figures included already in your detailed estimates on pages 13, 14, and 15?

Mr. ZAPPACOSTA. Basically the construction costs included in that $88 million. There is an $8.9 million figure in there for DOD schools, which includes the Pan Canal College.

Mr. WYATT. Which is $1 million, isn't it?

Mr. ZAPPACOSTA. Just about $17 million, yes, sir. It's $8,925,000 for all schools.

Mr. BONIOR. I thank the gentleman.

Mr. CARNEY. I thank you, Mr. Bonior, you took the question right out of my mouth. I was concerned about that.

And, again, on the following area, the compensation for loss of exchange and commissary benefits to U.S. citizens, on compensating them, could we get some sort of estimate on that?

Mr. STAATS. That would be more difficult, but we can give you a ball park figure.

[The following was submitted:]

COST OF LIVING ALLOWANCE—COLA

We would like to point out that there are different methods of computing a COLA and there are several factors such as the rate of inflation, salary base, and number of employee entitled to the COLA that make it very difficult to estimate the cost at this time. However, we understand that in his testimony, Governor Parfitt estimated the cost to be about $10–11 million, based on 15 percent of the 1980 average wage adjusted for a 7 percent inflation factor, and will submit the details of the calculation. This would be one method computing the COLA. Another method would be the one presently used by the State Department in accordance with the Standard Regulations, Government Civilians, Foreign Areas (Section 941.1). This method is based on a survey of the cost of living at a given post, exclusive of quarter costs, compared to Washington, D.C. The computation of the allowances takes into consideration, the marital status, family size, income level and post classification based on the survey. We would like to point out that as of December 14, 1978 (Section 920 of the regulations), only 2 out of 17 State Department posts in the vicinity of Panama are receiving post allowance. The posts are Caracas, Venezuela and Paramaribo, Surinam, which have a post classification of 20 and 10 respectively. Using the post classification for Caracas and Paramaribo as hypothetical examples, for an estimated 1,700 employees with a salary range of $24,000 - $25,999, a rough estimate of the COLA would be as follows:

Caracas (post class 20):
1 family member: 1,700 × $2,080 yr. = $3,536,000 yr.
2 family members: 1,700 × 2,420 yr. = 3,910,000 yr.
3 family members: 1,700 × 2,420 yr. = 4,114,000 yr.
Paramaribo (post class 10):
1 family member: 1,700 × $1,040 yr. = $1,768,000 yr.
2 family members: 1,700 × 1,150 yr. = 1,955,000 yr.
3 family members: 1,700 × 1,210 yr. = 2,057,000 yr.

However, to arrive at a precise estimate under this method, it would be necessary to know number of family members of each employee and salary range.

Mr. Carney. Ballpark would be fine. At least we are getting somewhere now, and I appreciate your cooperation. We are starting to see the light at the end of the tunnel, I believe.

If I might just summarize—then, you feel that the concrete cost that you can identify now would be about $400 million?

Mr. Staats. That's in addition to the $400 million that would be lost if we do not——

Mr. Carney. Charge the interest.

Mr. Staats. Interest on the interest-bearing investment.

Mr. Carney. Right. Now we are at $800 million, depending on how you would like to interpret that.

Mr. Bauman said before, of course, that General McAuliffe indicated that the additional cost to DOD could run between $60 and $80 million; there could be a conflict with some of your figures—we could be hitting the same things twice. I think that's how I read your answer.

Could we try to clarify that? And then I think we would really be down to a point where the members of this committee will know exactly how much the taxpayer in the United States is going to have to pay to implement this treaty?

Mr. Staats. We could get the head of our office in Panama to get from General McAuliffe the figures that he has used, so we could reconcile our data with his.

Would that take care of it?

Mr. Carney. I think that would, and then I think finally we would have some kind of figure that we could work with. We have identified some costs that we cannot put a figure on, but we realize that they will exist—and I think then this committee can act from a standpoint of having some intelligence as to the cost.

And I appreciate it. I thank you very much for your testimony, too, by the way.

Thank you, Mr. Chairman.

[The following was submitted:]

Department of Defense Additional Costs

The Department of Defense additional costs referred to by General McAuliffe of $60–$80 million was not available as of March 14, 1979. We have been informed that the Department of Defense is currently in the process of developing the Department's incremental costs for the life of the Treaty.

Mr. Hubbard. Thank you, Congressman Carney. I now call on counsel for the full committee, Mr. Ernest Corrado.

Mr. Corrado. General, in line with the——

Mr. Hubbard. My apologies, Congressman Wyatt. Go ahead, Ernie—he doesn't mind. I will come right back to you, Joe.

Mr. Corrado. Mr. Comptroller General, we have heard all the figures that have been laid out with respect to costs—and these don't take into account the 30 cents per ton or the three $10 million incremental figures. I look at the budget and I see that the line item for tolls in 1977 was $163 million; it's projected to be $180 million and then $188 million.

Where, in your opinion, will all this money come from? Obviously the tolls can't supply it. The toll figures that are projected can't even come anywhere near addressing the cost.

Where, in your opinion, will this money come from?

Mr. STAATS. Well, of course, we do know there is a great deal of difference of opinion as to how high we can raise those tolls and not divert traffic overland, for example, from Japan. We do know that the pipeline will be in operation before too long from Long Beach to Midland, Tex., which will divert certainly part of the North Slope oil off of the canal traffic.

These are all very difficult matters to estimate. The special study made last year indicated that maybe an overall increase of, what, 35 percent?

Mr. ZAPPACOSTA. Of 35 to 37 percent.

Mr. STAATS. Would be possible.

Mr. ZAPPACOSTA. Maximum of 75 percent.

Mr. CORRADO. You mean maximum to the point where you will divert traffic?

Mr. STAATS. At some point it becomes counterproductive. But I am not sanguine myself with respect to any set of figures, except in a broad range, that I would want to rely on as to where that point will be reached.

For example, I am told that the profit margin in banana sales is so small that any substantial increase in tolls might be enough to discontinue the shipments.

The Panama Canal Company, I believe, is in the process of updating the data with respect to the amount of increase in the tolls that could be made without diversion of traffic in any substantial amount.

That is to be available I believe by——

Mr. ZAPPACOSTA. By mid-March, so we understand.

Mr. STAATS. In about 2 weeks.

Mr. CORRADO. You know, we have had numbers of studies over the years on this very question, and I can remember some years ago when the figure 25 percent was used. Well, we have exceeded that in the last two toll raises, and a third de facto toll raise. And I know the figure 30 to 37 percent has been used before we hit the so-called point of no return, but if you talk to the shipping public, U.S. flag, and the consumer and foreign flag, they will tell you a different story even from that.

And when we consider these tremendous costs in addition to the cost to be paid to Panama, I don't know if you agree or not, but where will the money come from? Because obviously it won't come from the tolls.

Mr. STAATS. Well, you may be right about whether it can come from the tolls or not, and I agree with you—it certainly is a good question. If it doesn't come from the tolls, there is only one other place it can come from, you know that.

Mr. CORRADO. Well, that's where I was trying to get to. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Hubbard**. Thank you, Ernie. Congressman Wyatt?

Mr. **Wyatt**. Mr. Staats, do you have any information on the increase in oil costs—increases by virtue of the fact of increases in the tolls in the two bills?

Mr. **Staats**. On oil flowing through the canal?

Mr. **Wyatt**. Right.

Mr. **Staats**. I don't have it; no, sir.

Mr. **Wyatt**. Obviously you've done studies. What is the percentage of petroleum as part of the total shipments through the canal?

Mr. **Staats**. Oh, yes, we can get that. There is no problem in getting that. I don't have the figure offhand.

Mr. **Hubbard**. We will have the Energy Department with us Wednesday who will be best informed on that.

Mr. **Staats**. That data is available, I know that.

Mr. **Wyatt**. But you think the biggest problem in terms of increase in tolls is with the shipment of oil.

Mr. **Staats**. I think that's one of the biggest question marks with respect to the future traffic, because one of the main items resulting in the increase in revenues has been the North Slope oil.

Mr. **Wyatt**. In fact, the Canal Company was losing money until, what, 1976?

When there was (*a*) an increase in tolls, 1976–1977, and (*b*) a rather large increase in the movement of oil.

Mr. **Staats**. Right. If you would like for us to get the data for you, we would be happy to do it.

Mr. **Wyatt**. I think I have seen it.

Mr. **Hubbard**. If the Energy Department cannot supply us with that information Wednesday, then we would maybe ask you to help inform us.

Mr. **Wyatt**. Probably more important than that would be those other transshipments that could potentially be affected by an increase in tolls. You mentioned bananas, in other words. Are we talking in terms of food costs for the American consumer going up?

Mr. **Staats**. Well, the one that we have been thinking about most directly is one that was mentioned here this morning, and that is on your containerized shipments from the Far East. At some point it is cheaper to ship those overland by rail than it is to go through the canal.

I think the best we could do probably would be to give you the major items that now constitute their revenues and give you our own analysis as to what sensitivity there might be with respect to those shipments.

Mr. **Wyatt**. Thank you. Thank you, Mr. Chairman.

Mr. **Hubbard**. Congressman George Hansen.

Mr. **Hansen**. Thank you, Mr. Chairman. It's good to see you again, Mr. Staats.

I wondered, on the $70 million approximate surplus there is in the Panama Canal operating fund, has there been any recommendation made as to what to do with this? Should there be a retirement of part of the $319-million debt, or should it be left there as a contingency operating fund—or what would your recommendation be?

Mr. **Staats**. I am not sure I am clear with respect to your question.

Mr. HANSEN. There is approximately $70 million that exists in the Panama Canal fund as a surplus.

Mr. STAATS. Yes; I see the figure.

Mr. ZAPPACOSTA. Well, actually, Mr. Hansen, after the company has determined, in accordance with OMB instructions, the liquidity requirements that are necessary, then I think it would be prudent for the Board of Directors to declare a dividend to the Treasury.

Mr. HANSEN. I would think so.

Mr. STAATS. And that would be, of course, credited against the investment which we have identified in our statement.

Mr. HANSEN. Would it be necessary to include this in legislation in order to assure that this happens, considering the flexibility of treaty terms, as we have seen them?

Mr. STAATS. You are really getting at the question of whether or not the investment should be repaid before the canal is turned over to Panama.

And the one way you could do that would be to accelerate depreciation, and those costs, then, would have to be worked into your toll base again. Some part of the $70 million conceivably could be used for that purpose also.

Mr. HANSEN. I might ask you now—I think it's been developed—I haven't been here for your whole testimony—but I did read and follow your testimony as you delivered it earlier. And as I understand, there is going to be a substantial cost, $800 million or more, as far as taxpayers are concerned in the transfer of the Panama Canal; is that correct?

Mr. STAATS. That would be a minimum.

Mr. HANSEN. And there will be a substantial cost also to consumers in terms of the toll increases that are anticipated, would that not be a fact?

Mr. STAATS. Well, that is a cost that is involved in the toll increases directly, would be a cost to the general public for that portion of the traffic which originates in the United States or is destined to a U.S. port.

Mr. HANSEN. And tolls can only go so high, and then you reach a point of diminishing returns, as far as traffic through the canal is concerned.

Mr. STAATS. Yes; that is a point we have just been discussing here. It's not at all clear, and there is not agreement as to what that point is, but everyone agrees that in principle there is such a point.

Mr. HANSEN. So if that point is reached one way or another, then it does become incumbent upon the taxpayers, to fulfill the obligations of the treaty in terms of payments to Panama and this type of thing; is this correct?

Mr. STAATS. I think that's a correct interpretation.

Mr. BONIOR. Would the gentleman yield just a second?

Mr. HANSEN. Yes, sir.

Mr. BONIOR. Congressman Hansen's question about $800 million—you said "minimum."

Mr. STAATS. Well, it's a minimum if you assume—that you are not going to forgive the interest on the interest-bearing capital investment.

Mr. BONIOR. OK, I just wanted to clear that.

Mr. STAATS. That's the $19.3 million current rate, which will go up over a 20-year period—that translates to about $400 million.

Mr. HANSEN. And does the gentleman anticipate, with regard to Alaskan oil, that a problem may arise in terms of its ability to compete with Near Eastern oil with perhaps a resultant diversion of that oil to Japanese or other oriental markets as an adjustment pursuant to the law of supply and demand?

Mr. STAATS. Well, you could be right on that. I was not really thinking about that so much as I was the fact that part of the increase in the traffic for oil from the North Slope has been due to the fact that the pipeline is not operating from Long Beach to Midland, Tex.

Mr. HANSEN. Does the gentleman have an estimate—you have talked about book value, talked about depreciated value—what would replacement value be. Do you have a ballpark figure of what the replacement value would be for the Panama Canal?

Mr. STAATS. We do not have. It would be very high.

Mr. HANSEN. $10 billion, $20 billion?

Mr. STAATS. I have no basis for a particular figure.

Mr. HANSEN. Probably scare you to estimate, wouldn't it?

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Hansen. Bernie Tannenbaum, staff counsel, do you have some questions?

Mr. TANNENBAUM. I have a couple of questions, Mr. Chairman. On page 17, to follow up the question just asked, you suggest that the preferable method for valuing the assets would be the book value. Of course, that is the net depreciated book value.

Don't we have a problem with the replacement of these items over the term of the treaty and keeping them in good repair? The obligation under the treaty is that in the year 2000 they be turned over in good working condition, free from all expenses.

So wouldn't the proper valuation to be placed on these assets be one that would assure that the depreciation that is set aside would be sufficient to keep them in good working condition throughout the term of the treaty?

Mr. STAATS. Well, that sounds logical to me. But the question here that we have raised earlier, in terms of Congress monitoring the capital investment program, has to do with at what point you are making investments which are really designed to keep the operation going and turned over in an operating condition, as against those which might represent a major improvement in the entire operation, which would not be required for that particular purpose.

Mr. ZAPPACOSTA. Also, are you suggesting, Mr. Tannenbaum, that you revalue those assets to current value?

Mr. TANNENBAUM. Well, current value might be——

Mr. ZAPPACOSTA. Or using an index, price-level index?

Mr. TANNENBAUM. A replacement value possibly.

Mr. STAATS. You are speaking only for a new capital investment?

Mr. TANNENBAUM. So that there would be sufficient funds available taken out of depreciation so as to be sure to maintain the equipment.

Mr. ZAPPACOSTA. Remember this: If you revalue, you are increasing the depreciation charge and you are bumping that toll rate up again.

Mr. TANNENBAUM. I realize that the problem is, how do we, without supplementing the budget, how do we maintain these assets in good working condition throughout the term of the treaty, unless the——

Mr. ZAPPACOSTA. If you were replacing any asset that's coming in after the treaty has gone into force, naturally it will be based on the cost at that point in time of replacement of the new asset, and it then would be depreciated over the remaining life of the treaty.

But if you start off, say, on October 1 and revalue all those assets as shown in our 1977 report, where we put in price-level statements—you can see what the effect on depreciation is. Under historical dollars for fiscal year 1977, the annual depreciation charge was $18,896,000. Under price level dollar valuation, it was $41,883,000. You went from a $4.4 million profit to a $23 million loss. That's based on current toll rates.

Now, the replacements would be at the current dollar value, yes, and would be depreciated. But to revalue the existing assets would have an effect on toll rates.

Mr. STAATS. I think the distinction here is a very important one. You are talking only about new investments. You will still get normal depreciation against that. And that would be worked into your rate base.

Mr. TANNENBAUM. I gather you do share with the members of this committee the concern that the Commission will be able to continue to operate in the black, and that it is a serious concern for us to contemplate.

Mr. STAATS. Yes; we have stated that concern here in our statement today. But I guess the bottom-line question, here which we all face is how far can you raise the tolls without their becoming counterproductive. I think that is the bottom-line question, which I am not sure that anyone can provide a 100-percent answer to today or at the time you will have to act on this legislation.

Mr. TANNENBAUM. And I gather, too, that you are not too impressed with the magic formula in H.R. 1716, which keeps the toll increase down to 14 percent for the reasons you stated; namely, that those costs are just being transferred to the taxpayers.

Mr. STAATS. That's right.

Mr. TANNENBAUM. One point, just for clarification. You estimate that the 30-cent-per-ton payment for 1980 would be $61 million, did you say?

Mr. ZAPPACOSTA. Yes; based on their budget figure for 1980, it was around 62 million, yes.

Mr. TANNENBAUM. And then we had the other 10 million——

Mr. ZAPPACOSTA. It was $51 million plus the $10 million fixed annuity. Then what we did was subtract out the $2.3 million that is currently being paid, and came down to a round figure, $60 million.

Now, if you add on top of that the $10 million for public services, you are up to $70 million.

Mr. TANNENBAUM. Well, Governor Parfitt uses a $54 million figure plus the $10 million.

The other thing, too—on the interest rate charge—you pointed out that the current rate is, of course, escalating and that the interest charge—he estimates that close to $26 million.

Mr. Staats. That's the reason I used the word "minimum," because we are talking here about the long-term rate, and as your debt turns over, that rate is bound to go up. So the $400 million is based on the current interest rate, and everyone knows that it will go up some.

Mr. Tannenbaum. Am I off the wall in suggesting that the payments directly to Panama will soon exceed $100 million a year?

Mr. Zappacosta. It depends basically on what the rate of inflation is going to be when you revalue the 30 cents a ton biannually.

Mr. Tannenbaum. But even assuming the current rate of inflation?

Mr. Zappacosta. And if your tonnage keeps up, it's entirely conceivable.

But getting to your interest question, the rate that would be used, if they continue to use the July rate, the computed interest rate on the long-term bonds for fiscal year 1979 would be 6.509, whereas it was 6.071 for fiscal year 1978.

Mr. Tannenbaum. And that's a bargain rate under today's interest costs.

Mr. Zappacosta. Now, the question is this: The July rate was used, I think, in the past when you had a June 30 fiscal year, and now that the fiscal year has changed to September 30, you may want to continue with the interest factor and consider changing that date to possibly the interest rate as of September 30.

And, of course, like the example in this case, September 30 will be 6.587. That's just on the long-term bonds. If you use the whole marketable issues of the Treasury, then, of course, it's going to be closer to what you are talking about—it's going to be up there.

Mr. Staats. But the long-term rate is the proper one, we think.

Mr. Tannenbaum. Thank you very much.

Mr. Hubbard. Are there any other questions for Mr. Staats by a member of the committee?

Congressman Bauman.

Mr. Bauman. Just one last question, Mr. Staats. When you handed down your opinion regarding expenditure by Department of the Army for $10 million plus the military construction cost last fall, that was preceded by a colloquy on the floor in which I participated with the gentleman from Utah, Mr. McKay, as well as report statements from the Appropriations subcommittees denying the expenditure of those funds. The ultimate outcome was a ruling that, in an emergency situation as was characterized by the appropriate officials, it is legal to go ahead and do so.

May I infer from that that anything we say in our reports regarding these cost matters and expenditures are really worthless if indeed an emergency is declared by the Executive, so if it's going to have any impact you have got to write it into law?

Mr. Staats. Let me say this about the problem that we faced in this particular case. We get asked the same question in a hundred different situations literally during the course of the year.

Over time our office has had to take the language of the act itself as governing. And the reason for that is that the legislative history in one body as against the other may be quite different; the Senate may take one position, the House take another position. It is the language or the wording of the statute itself that we think has to be governing. We don't know of any alternative to that.

It seemed to me that the question which has been raised here, if I may say so, is more a question of whether or not the Department of Defense acted in a manner which ran counter to the obvious sentiment, feeling about the matter, in the House. I don't think there is much question about that.

But we were asked the legal question, and that is what we have to use as our authority, if we have to disallow an expenditure. That is, what we have to rely upon is the wording of the statute itself.

Now, whether or not the Department of the Army and the Department of Defense acted properly in this case, without coming to some agreement with the House, is another question. But all that we could do was act on the legal question that was before us.

Mr. BAUMAN. Well, I appreciate that answer because I think it would serve as a good guideline for anything we might be drafting here. There is a tendency on the part of the Congress, as you know, to compromise things out in the belief that a report means something beyond the words on the paper—and, as you indicate, it sometimes doesn't even mean the words that are on the paper.

So I appreciate that legislative guidance.

Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Carney.

Mr. CARNEY. I have one more question of Mr. Staats. Concerning liabilities, supposing the canal was exposed to a liability of, say, a passenger ship going through or something like that where there was an extensive liability, and the canal was at fault and they were subject to this large financial loss, where would that be taken care of?

Mr. ZAPPACOSTA. Are you talking about marine accidents?

Mr. CARNEY. Yes, that would be my example.

Mr. ZAPPACOSTA. At the present time what the Panama Canal Company does is, they have set up a provision for marine accidents, and through charges to operations. Basically, what they do is, once they receive a claim and after all the investigation has come about as to whether or not it was in fact the fault of the company or the fault of someone other than the company, then the charge or the payment of that claim is charged against that provision that has been set up in the statements by a periodic charge to the operating cost.

They do the same thing for lock overhauls. In other words, what you are trying to do is even out your charges. Instead of going up like this, they are trying to even it out, so they are taking a periodic charge annually and putting it into a reserve, so to speak.

And when you actually incur the expense, it is charged against the reserve.

Mr. CARNEY. A self-insurance program.

Mr. ZAPPACOSTA. In a sense, yes.

Mr. STAATS. Exactly, that's right.

Mr. CARNEY. As of October of this year now, will they continue that program of having a self-insurance program, so to speak? And if there wasn't enough funding in that self-insurance program to cover this type of contingency, would the taxpayer of the United States be subject to that liability?

Mr. ZAPPACOSTA. Well, actually, if they operate under a corporation, based on their estimate, they would put aside out of their revenue a provision for this. As a matter of fact, in fiscal year 1977, at the insistence of the General Accounting Office, we made them adjust to the extent of about $957,000—almost $1 million—in that provision, because of the fact that the actual charges for accidents were greater than what had been provided for.

Mr. CARNEY. Would you be in that position to make them adjust between now and 1999, if you felt it necessary?

Mr. ZAPPACOSTA. In the audit, certainly; under any audit we would.

Mr. STAATS. That's right.

Mr. HANSEN. Would the gentleman yield?

Mr. CARNEY. Yes.

Mr. HANSEN. I would just like to make one observation. They have a situation like that now where they had a cruise ship run aground in the channel. This incident created extensive damage; and meant that they had to send the passengers home by air, drydock the ship and cancel a further cruise that was planned, causing at least a half-million-dollar liability.

Under the new treaty, the drydocks go to Panama and canal operations won't have first call on these drydocks as before, which is going to increase the expense or the liability involved in one of these types of incidents.

Therefore the gentleman has a real strong point in the fact that expenses are going to escalate which had been minimized before under the Canal Company where they had priority call on the drydocks and everything else. Such minimizing of charges and the liabilities will be practically impossible from now on under the new treaties, the canal will no longer have first call on those docks, but will get access in the order of things as Panama sees it.

That is according to Governor Parfitt.

Mr. ZAPPACOSTA. That's entirely possible, Mr. Hansen, but still, from an accounting standpoint, this provision would still be set up—it would still have to come out of the revenues. It could possibly cost you more; we don't know.

Mr. CARNEY. I have one last question. Do you have any idea of how much revenue we will lose now because we are losing areas like the drydocks in Balboa—how much revenue the Panama Canal Company generated to offset the cost of running the canal, but now that will go directly to the Panamanian Treasury?

Mr. STAATS. I think we have that.

Mr. ZAPPACOSTA. Well, as a rough estimate, basically if you take the tentative statements for fiscal year 1978—the Company would have this broken down by their various operations, but just as a wild ballpark figure, they had a total of $331 million in total revenues; of that $195 million was from tolls. So you have other revenues of $135 million.

Now, it could be from everything; it is from the rental of your housing, your retail operations; it's from your marine bunkering, railroad, and what have you.

Mr. CARNEY. Well, everything you have mentioned now we lose and that would go directly to the Panamanian Treasury, so, in other words, we are talking about a sizable sum that we are going to have to make up.

Is that what makes the difference in the 14-percent increase of the tolls, proposed 14-percent increase?

Mr. ZAPPACOSTA. It's additional costs that also are going in there, the additional payments to Panama.

Mr. CARNEY. Well, I understand that; 6 percent of that would be the additional payments.

Mr. ZAPPACOSTA. That's right. It's a combination——

Mr. CARNEY. It's a combination of the two.

Mr. ZAPPACOSTA. But let me caution you. This figure I am quoting you now is just a wild ballpark figure. I mean, you would have to get the minute detail of it. I'm just saying other revenues total this much, and it can encompass everything. It can encompass revenues for the operations that aren't going over, but the ones that are going over are revenue producing.

Mr. STAATS. That would be your starting point to make that kind of analysis that you are seeking. That would be the outside figure. What the actual figure would be would be somewhat less than that, but I don't think we can give you the details today.

Mr. CARNEY. Those costs, in fact, would be covered by the 14-percent increase; is that correct?

Mr. ZAPPACOSTA. I would think so.

Mr. CARNEY. Thank you. Thank you, Mr. Chairman.

Mr. HUBBARD. The general counsel is called on for clarification. Ernie Corrado.

Mr. CORRADO. I would just like to say that, although the port facility, such as the Balboa drydock, goes over to the Panamanians, we find out now that in article V, the United States actually will have the use of those facilities in these situations that may arise. In other words, we will be able to put our employees in down there and use it and pay for the materials.

So it is a little different from the whole thing going over totally. Apparently there is a reservation out for our use in article V.

Mr. CARNEY. I fully understand that, but if a foreign flag ship needed to use that facility, the Canal Zone would receive that revenue and that would offset the cost of running the canal. Now that goes to the Treasury of Panama, so they had to raise the revenue, the totals, to offset that.

Mr. CORRADO. I don't think this affects your argument with respect to the revenue. I just wanted to make sure that the record was not unclear, though, since I raised it this morning about the Balboa drydock, that it is a total reversion—a total giving over to Panama. Apparently article V does reserve the right for us to use the port facilities, which doesn't affect the revenue aspect of it.

But I wouldn't want the record to remain unclear with respect to our rights to use it if occasion arises and to pay for the materials.

Mr. HUBBARD. Minutes ago the letter that was referred to—do you have that entered in the record?

Mr. ZAPPACOSTA. I gave it to the reporter.

[The following was received for the record:]

The Legal Adviser,
Department of State,
Washington, D.C., July 24, 1978.

Mr. **Frank** M. **Zappacosta**
Assistant Director, U.S. General Accounting Office
Washington, D.C.

Dear Mr. Zappacosta: This is in response to your letter of April 4 posing several questions concerning the interpretation of the Panama Canal Treaty. The delay is regretted.

The following responses are keyed to the questions posed in your letter.

1. a. The procedure to be followed in implementing Article III(5) of the Treaty is set forth in an understanding adopted by the Senate and agreed to by the Republic of Panama. That understanding provides in pertinent part:

> Before the first day of the three-year period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the cost of such services.* * * If payments made under paragraph 5 of Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be.

Thus, the Canal Commission is to pay Panama $10 million a year for the first three years of the Treaty. Any difference between that amount and the actual cost to Panama of providing services during that period, however, will be made up through adjustments to the payments in the subsequent three-year period.

1. b. It is contemplated that Panama will transmit to the United States its determination of the costs incurred in supplying the public services both during the initial three-year period and thereafter. The initial assessment of the validity of the cost data submitted by the Republic of Panama would be made by the appropriate agency of the United States Government, presumably the Panama Canal Commission. Pursuant to the aforementioned Senate understanding, "there shall be an independent and binding audit, conducted by an auditor mutually selected by both Parties, of any costs disputed by the Parties."

1. c. As indicated in the answer to question 1. a. above, the level and quality of services to be provided is to be agreed upon prior to each three-year period, including the first three-year period. The Senate understanding specifies that the services to be agreed upon are "to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas.* * *"

2. a. & b. Yes. We have consulted with the Panama Canal Company, and it is contemplated that the Canal Commission would respond to reasonable requests of the utilities agencies of the Republic of Panama for such cost data.

3. a. The use of the terms "expenditures" and "surplus" in Article XIII (4)(c) does not mandate the use of any particular system of accounting. Rather, the provision reflects the agreement of the two Parties that all legitimate costs attributable to the operation, maintenance and improvement of the Canal, including the payments to Panama provided for in Article III(5) and Article XIII (4)(a) and (4)(b), would be deducted from the revenues of the Canal each year, and if a surplus existed, Panama would receive the amount of such surplus up to the maximum specified in the Treaty. Within this framework, the United States would have discretion, pursuant to its authority under Article III of the Treaty to manage, operate, and maintain the Canal, to adopt any generally accepted accounting system to determine the amount of any surplus. This interpretation is buttressed by an understanding adopted by the Senate and agreed to by the Republic of Panama which provides:

> Nothing in paragraph 4(c) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal."

3. b. The Treaty provides for payment of up to $10 million out of the operating surplus in a given year. It further provides that "in the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid *from operating surpluses in future years* in a manner to

be mutually agreed upon" (emphasis supplied). There is no provision for payment out of surpluses accumulated by the Canal Commission in past years.

3. c. No. The $10 million contingnet payment is payable in a given year only to the extent that revenues exceed expenditures.

3. d. An understanding adopted by the Senate and agreed to by the Republic of Panama provides that "toll rates . . . need not be set at levels designed to produce revenues to cover the [contingent $10 million] payment to the Republic of Panama."

3. e. In the event of a short-fall in revenues, the contingent $10 million payment would not be payable under the terms of the Treaty, inasmuch as it is contingent upon the existence of a surplus of operating revenues over expenditures in a given year.

4. a. As you correctly note, the respective commitments of the U.S. and Panama set forth in Article X, paragraph 7 of the Treaty with respect to current employees of the Panama Canal Company/Canal Zone Government do not constitute absolute guarantees of continued employment at the same terms and conditions in effect at present. Rather, they are qualified by the phrase "to the maximum extent feasible." In our view, the effect of this qualifying phrase is to make clear that neither the U.S. nor Panama is required to take steps that are simply not feasible from a practical standpoint, such as retaining personnel in positions that are no longer required for the conduct of the activity in question; conversely, the Parties are obligated by these provisions to take in good faith all reasonable and practicable steps open to them to carry out their respective commitments with respect to the employees.

We will be discussing with Panama their plans for implementing their commitments with respect to employees of activities to be transferred to Panama. Hopefully we will then be better able to assess the full impact of the transfer of these activities on the workforce.

4. b. The Treaty does not establish any obligations with respect to the payment of severance pay. This is a matter which would be governed entirely by U.S. domestic law and regulations.

4. c. No. Panama's commitment to retain existing employees of transferred activities to the maximum extent feasible and to ensure, to the maximum extent feasible, that the terms and conditions of employment applicable to such personnel employed in these activities are no less favorable than those in effect prior to the entry into force of the Treaty, is independent of any benefits that may be afforded such persons by the United States.

I hope the foregoing information will be of use to you in your assessment of the financial impact of the Treaties.

Sincerely,

Herbert J. Hansell.

U.S. General Accounting Office,
Washington, D.C., April 4, 1978.

Mr. Herbert J. Hansell,
The Legal Adviser,
Department of State

Dear Mr. Hansell: Our current assessment of the financial impact of the Panama Canal Treaties has raised several questions as to the interpretation of certain articles of the Treaties. We would appreciate receiving the Department of State's interpretation or position to the questions enumerated below.

1. Article II, paragraph 5, of the Treaty states that the Panama Canal Commission shall reimburse Panama the amount of $10 million a year for police, street cleaning, traffic management and garbage collection services, and that every 3 years the cost involved in furnishing the services, shall be reexamined to determine whether an adjustment of the annual payment should be made because of inflation or other relevant factors affecting the cost of such services.

a. Does this require a flat payment of $10 million a year for 3 years regardless of cost to Panama?

b. After the 3-year period, will the payments be based on cost data supplies by Panama and adjusted accordingly, and who will examine the validity of the cost data?

c. Have any standards been established to ensure the quality of the services to be provided by Panama?

2. Article VI, paragraph 6, of the Agreement in Implementation of Article III of the Panama Canal Treaty, provides in part that Panama Canal Commission shall on

behalf of the utilities agencies of the Republic of Panama, continue to provide utilities such as power, water and sewers to industrial and commercial enterprises and other persons in the area, other than United States citizen employees and dependents; and the utilities agencies of the Republic of Panama will be responsible for setting rates for and billing such customers, and shall reimburse the Commission for its cost in providing such services.

a. Is it contemplated that the Commission will supply the utility agencies of the republic of Panama cost data for the services rendered by the Commission?

b. Will the utility agencies of the Republic of Panama have access to the cost data for examination?

3. Article XIII, paragraph 4(c) of the Treaty, states that the Republic of Panama will receive an annual payment of up to $10 million to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission, and if operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutally agreed.

a. Was the term "expenditures" intended to pertain only to cash outlays and synonomous with the term "disbursement", or does it equate to the term "expense" or "cost" in the accounting sense, which under the accrual basis of accounting would include amounts paid or payable, as well as amounts for non-cash expenses such as depreciation and reserves?

b. Was the term "surplus" intended to mean cumulative net profit as defined in the accounting sense as "earned surplus"?

c. Is the $10 million contingent payment to the Republic of Panama a binding obligation of the United States, if the revenues do not exceed expenditures?

d. Was it intended that the $10 million contingent payment be excluded from the toll base?

e. What are the relative priorities of payment in the event of a shortfall in revenues?

4. Article X, paragraph 7, of the Treaty provides that the Republic of Panama will hire former Canal entity employees at salaries and fringe benefits comparable to the former salaries, "to the maximum extent feasible." The Panama Canal Company is currently estimating that it must pay severance pay to all employees whose functions are being assumed by Panama. We understand that this is being based on an interpretation that there is no absolute requirements nor guarantee that Panama will provide employment or comparable benefits.

a. What is meant by "to the maximum extent feasible"?

b. Are employees retained by Panama entitled to severance pay by the Canal Organization?

c. If retained employees received severance pay, would this have a financial affect on the renumeration to be paid by Panama?

Please advise us if you have any questions or wish to discuss the request for information. I can be reached on 275-5889.

Sincerely yours,

FRANK M. ZAPPACOSTA,
Assistant Director.

Mr. HUBBARD. We have a few more questions.

Mr. CARNEY. On that clarification, if I might ask, do we have right of first use under Article 5?

Mr. CORRADO. We do not have the right for first use. Absolutely not.

Mr. CARNEY. And just for a matter of record, the figures that we talked about before do not include the loss of that $135 million revenue? That's an entirely different thing, right?

Mr. ZAPPACOSTA. What's that again, sir?

Mr. CARNEY. Well, I am saying that we are losing $135 million in revenue that the Canal Zone made other than the revenue they made through tolls, and we are losing some of that.

Mr. ZAPPACOSTA. That's right.

Mr. CARNEY. And that is not part of the $400 million we spoke of, because that is considered recapped by adding on 14 percent of the toll.

Mr. **Staats**. Just to be sure there is no misunderstanding here, the 135 that Mr. Zappacosta referred to are revenues, but there are costs that have to offset part of that; that's the revenue side of the ledger.

But there are costs that have to be looked at also. And we would be losing those, too.

Mr. **Carney**. Right, I agree with you on that.

But the problem is that there is a third entry, and that's the Bank of Panama who's getting the revenues which weren't there before; they stayed within the Panama Canal Zone, all that money—and the costs stayed within that.

I don't want to get into this, but we are involved in a three-way party now, for instance, with providing electricity to the people who are going to rent those same houses and use the same facilities, only we will provide the electricity and Panama will bill them.

So there could be an increased cost to the people living there—that type of thing.

I know it is not a full $135 million, but certainly we are going to lose some more money to Panama. It will be a windfall profit to Panama. That's the point I am trying to bring out. And, more specifically, it is not part of the $400 we talked about.

Mr. **Staats**. Yes.

Mr. **Carney**. Thank you.

Mr. **Hubbard**. And I believe counsel was in agreement that we do not have first use, to answer your question.

Mr. **Carney**. Thank you, Mr. Chairman.

Mr. **Hubbard**. Congressman Bauman.

Mr. **Bauman**. Is GAO involved right now in any assistance to the inventory that is being taken of equipment and so on in the Canal Zone?

Mr. **Zappacosta**. As far as actual taking inventory, no, sir. We observed some of it that is being taken by the various divisions and the general auditor of the company.

We have not gone out and actually taken it. In the course of our annual audit of the financial statements, however, we do a certain amount of independent testing.

Mr. **Bauman**. Then you have no knowledge of this instance that came to our attention about the possibility of the Navy having decided to remove a great many movable personal property and——

Mr. **Zappacosta**. I will check on that for you, if you like.

Mr. **Bauman**. I would appreciate it. Thank you, Mr. Chairman.

[The following was received for the record:]

REMOVABLE NAVY PROPERTY

We do not have the specific details of the property in question or the basis for the Navy's rationale and reasons for deciding to remove personal property at this time (March 14, 1979). However, we have been informed that the Navy is currently preparing a response to the question, and after we have had an opportunity to review the response, we will pursue the matter further with the Department of Defense.

Mr. **Hubbard**. Thank you, Congressman Bauman. Are there any other questions?

Hearing none, we want to thank you, Mr. Staats, the Comptroller General of the United States, for appearing before our subcommittee on the Panama Canal along with Mr. Frank Zappacosta and Mr. John Watson.

We appreciate your helpfulness and information.

Mr. STAATS. Thank you, Mr. Chairman.

Mr. HUBBARD. We need at this point unanimous consent to submit questions for the record by Mr. Merrill Whitman of our staff, who has written quite a few good questions. And is there a unanimous consent that we enter these in the record? Any objection? Hearing none, it is so ordered.

[The material follows:]

QUESTIONS OF W. MERRILL WHITMAN, AND ANSWERS SUPPLIED BY GENERAL ACCOUNTING OFFICE

Question 1. As you point out on page 2 of your statement, one of the fundamental differences between H.R. 111 and H.R. 1716 is that H.R. 1716 would continue under another name, the corporate agency now known as the Panama Canal Company, while H.R. 111 provides for operation of the Panama Canal by an unincorporated executive government agency. What do you regard as the ultimate basic difference between agencies in corporate form and non-corporate form?

Answer. An essential basic difference is that corporations are business-type entities whose performance can be measured in terms of a profit or loss. Their activities are financed principally from revenues generated by their operations contrasted with activities of executive government agencies which are financed through the appropriation process.

Question 2. Could not the Panama Canal be operated with either form of agency?

Answer. Yes, as we stated in our testimony, the new Commission could operate as either an executive agency or a Government corporation. However, we believe that there would be an additional administrative burden and loss of management flexibility in the executive agency form of organization which would not be compensated for by an improvement in Congressional oversight.

Question 3. What provisions of law setting up an agency determine whether it enjoys the advantages you have described as those of the corporate form?

Answer. In order for a Government entity to be treated as a corporation as advocated in our testimony, the organic legislation establishing the corporation must include a provision which would specifically make the entity subject to the Government Corporation Control Act, 31 U.S.C. section 841 et seq. (1976). We note that this language is adequately included in H.R. 1716, title II, section 209 (a).

Under that act, a corporation must prepare an annual business-type budget for submission to the Office of Management and Budget pursuant to 31 U.S.C. section 847 (1976). The budget must contain a statement of the corporation's financial condition, its income and expenses, and analysis of the surpluses and deficits, and other data pertaining to the corporation's business operations. Pursuant to 31 U.S.C. section 848 (1976) this budget program, as "modified, amended or revised by the President, shall be transmitted to the Congress as part of the annual budget," for consideration by the Congress in determining what appropriations or limitations thereon are necessary (31 U.S.C. section 849 (1970)). The act also provides for a GAO audit of the corporations finances every 3 years, 31 U.S.C. section 850. Under 31 U.S.C. section 851, GAO must report the results of its financial audit to the Congress. [The act has a provision which would bring Government corporations under greater fiscal control if the need arises. Under 31 U.S.C. section 852, OMB, with the approval of the President can recommend that any wholly owned Government corporation be treated as a Government agency with regard to fiscal matters. If Congress approves such a recommendation, ordinary Federal fiscal restraints would apply, resulting in greater accountability under the Budget and Accounting Act of 1921, as amended, 31 U.S.C. section 1 et seq.

Question 4. What exactly would be the powers of the Commission under the provisions of H.R. 1716?

Answer. Title II of H.R. 1716 is concerned primarily with the organization of the Panama Canal Commission, its financial management, operations and authority. Under this title the Commission would be established as the successor to the Panama Canal Company, and would assume the assets and liabilities of the company and the Canal Zone Government which were not transferred under the treaty or otherwise disposed of, and would be subject to most of the statutory provisions which now govern the company, including its powers as a Government corporation and its authority to borrow funds up to a fixed ceiling from the Treasury. The transition is effected to a large extent by the definitions in section 2 of the bill, which provide that references in the Canal Zone to the "Panama Canal Company" would be amended to read the "Panama Canal Commission." (See our response to No. 5 below.)

Question 5. Article III of the treaty provides that on the effective date of the treaty, the Panama Canal Company shall cease to operate in Panama. H.R. 1716 changes the name of the corporation and continues its operations under the same provisions of law applicable to the Panama Canal Company, with certain amendments. Would this device, i.e., the change of the Company's name, be regarded as compliance with a private transaction in which a company or individual agreed to go out of business?

Answer. Clause 10 of Article III of the treaty does require that the Panama Canal Company (Company) shall cease to operate within the Canal Zone, on the effective date of the treaty. Clause 3 of that same Article provides that the:

> * * * United States of America shall, in accordance with the terms of the treaty and the provisions of the United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission which shall be constituted by and in conformity with the laws of the United States of America.

H.R. 1716 contains the implementing legislation necessary to establish this new entity.

Title II of H.R. 1716 sets forth the specific powers, duties, and organization of the Commission for the purpose of managing, operating, and maintaining the Panama Canal in accordance with the treaty. Section 2 (c)(1) of H.R. 1716, provides for the change of names from the Panama Canal Company to the Panama Canal Commission. This provision does not provide for the continuance of the Canal operations under the same provisions of law applicable to the Panama Canal Company. It is merely a device which would amend all references to the company which would appear in the Panama Canal Code and in other laws of the United States, thereby conforming existing law with the treaty. This provision can be considered as a means to smoothly effectuate the transfer of certain functions from the company to the Commission.

Question 6. Would you provide a specific reference to the report of the Hoover Commission containing the recommendation of incorporation of "straight-line business activities" referred to in the Hoover Commission report?

Answer. Recommendation No. 3 of the Hoover Commission's (Commission on Organization of the Executive Branch of the Government) 1949 report on Federal Business Enterprises states that:

> We recommend that straight-line business activities be incorporated so as to secure greater flexibility in management and simpler accounting, budgeting, and auditing methods."

At the time of this recommendation, administration of the various business enterprises in the Canal Zone was divided between the Panama Canal, an independent executive agency, and the Panama Railroad Company, a wholly-owned Government corporation. The Hoover Commission recommended was subsequently cited by the Bureau of the Budget (1) in recommendations to the President for the reorganization of the Panama Canal and Panama Railroad Company (81st Congress, 2nd Session, Document No. 460) and (2) in testimony supporting legislation to accomplish the reorganization (Hearings on H.R. 8677 before the Subcommittee on the Panama Canal, House Committee on Merchant Marine and Fisheries, 81st Congress, 2nd Session). The reorganization of business activities under the Panama Canal Company and governmental functions under the Canal Zone Government was authorized by Public Law 81-841, approved September 26, 1950.

Question 7. What specific types of business activities of the Government were referred to in the Hoover Commission report?

Answer. The Hoover Commission report contained recommendations applicable to a number of Federal business enterprises such as the Federal Housing Administration, Home Loan Banks, the Panama Railroad Company, Washington National Airport, the Rural Electrification Administration and the Commodity Credit Corporation.

Question 8. The report of the second Commission on Organization of the Executive Branch also discussed business activities of the Government in considerable detail. What types of business activities were under consideration of that Commission?

Answer. The second Commission on organization of the Executive Branch discussed all types of Government business enterprises. The Panama Canal Zone activities are discussed in detail in the Commission's March 1955 report to the

Congress on transportation. (For a complete listing, refer to pages 14 and 15 of the June 1955 index of the Commission's reports).

Question 9. Was the operation of the Panama Canal considered by either the first or second Commission on organization of the Executive Branch, and if so, did either report recommend incorporation of the agency operating the Panama Canal?

Answer. Panama Canal activities were considered in reports of both Commissions and in considerable detail in the second Commissions previously cited report on transportation.

As stated in the answer to question 6, at the time of the first Commission's 1949 report, the Panama Railroad Company was incorporated but certain business activities were being conducted by the Panama Canal, an independent executive agency. At the time of the second Commission's 1955 report, the Canal activities had been reorganized with the business activities under the Panama Canal Company, a Government corporation.

Question 10. What were the purposes of construction of the Canal as you understand them?

Answer. The history of the Canal indicates that both commercial and national defense considerations were important in the construction of the canal. This dual purpose was recognized in the 1950–1951 reorganization which excluded the costs of certain defense-related facilities from the investment base of the Panama Canal Company and which initiated the policy of charging tolls on military and other U.S. Government vessels. (See House Committee on Merchant Marine and Fisheries report to accompany H.R. 8677, 81st Congress, 2nd Session).

Question 11. Do you distinguish in any way between the activities of the Panama Railroad Company and its successor, the Panama Canal Company in the operation of the railroad, ports, retail stores in the activities generally referred to as transit activities on the one hand and other obviously commerical activities, such as the railroad, ports and retail stores, on the other?

Answer. Prior to the 1950–51 reorganization, the Panama Canal agency was responsible for the transiting of vessels through the Canal and the Panama Railroad Company's major responsibility was operating the trans-Isthmian railroad. However, both entities were engaged in business activities. (See House Document No. 460, 81st Congress, 2nd Session). The reorganization combined the transiting, railroad and business activities under the Panama Canal Company.

Question 12. On page 4 of your statement, you refer to a series of accounts not now maintained by the Panama Canal Company that would be required under the Accounting and Auditing Act of 1950 which would be made applicable to the Company by section 234 of H.R. 111. Does the Accounting and Auditing Act of 1950 now apply to the Canal Zone Government?

Answer. Yes, the Accounting and Auditing Act of 1950 applies to the Canal Zone Government.

Question 13. Who maintains the accounts of the Canal Zone Government?

Answer. The Panama Canal Company maintains the accounting records of the Canal Zone Government.

Question 14. What is the statutory basis for requiring the allotment accounts referred to on page 4?

Is this statute inapplicable to the Panama Canal Company?

Answer. The statutory basis for maintaining the series of accounts mentioned on page 4 of our testimony is the Accounting and Auditing Act of 1950, as amended, 31 U.S.C. and 65 et seq. (1976).

This act does not apply to the Panama Canal Company. Our authority to audit the financial transactions of the Company is authorized by the Government Corporation Control Act, 31 U.S.C. section 850. In the past we have undertaken the audit of the Panama Canal Zone Government as an integral part of the audit because the Company and the Government are closely related in terms of purpose and organization and because the Company is required by law to absorb the net cost of the Government.

Question 15. What are the "obligation accounts" to which your statement refers?

Answer. The obligation accounts would be included in the budgetary accounts that would be maintained to provide a clear showing of the status of appropriations in terms of apportionments, allotments, obligations, accrued expenditures, revenues, and reimbursements. Some of the basic accounts would be Unapportioned Appropriation-Current Year, Unalloted Apportionments-Current Year, Unliquidated Obligations-Current Year and Prior Years, Expended Appropriation-Current Year and Prior Years, revenues and reimbursements to Appropriation.

Question 16. How do they differ from the accounts maintained by the Panama Canal Company?

Answer. At the present time, the Panama Canal Company does not maintain the "Obligation Accounts" referred to in our statement and in question No. 15. (See response to question No. 15)

Question 17. Could not the accounts described in section 234 be established under principles, standards and related requirements prescribed by the Comptroller General under the provisions of the Accounting and Auditing Act of 1950?

Answer. Yes, the accounts described in Section 234 could be established in accordance with the principles, standards, and requirements prescribed by the Comptroller General for federal agencies. The principles, standards, and related requirements are contained in Title 2 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies.

Question 18. How significant would be the administrative burden for the Commission resulting from establishing accounts under section 234?

Answer. Without specific knowledge as to the method of funding by the Congress, that is whether the one overall funded account is used or a variety of funded accounts, it is difficult to determine what the additional administrative burden would be. As a minimum, there would be an increase in administrative work due to additional operating procedures, maintaining the required accounts and preparing necessary reports.

Question 19. Please describe specifically what steps would have to be taken to enable the Commission to keep it accounts in accordance with section 234.

Answer. The starting point would be to make a limited review of the exisintg accounting system to determine what accounts are being maintained, operating procedures employed, and documents and reports prepared maintaining the system either manually or computerized. The data obtained would then be compared with the requirements of maintaining the accounts in accordance with section 234 to determine what changes had to be made in the accounts structure, operating procedures, documents and reports, and related computer programs and procedures. The specific procedures to implement the changes differ based on whether the accounts would be maintained manually or computerized.

Question 20. On page 17 you refer to the requirement of H.R. 111 that revenues of the Canal be deposited in the Treasury and expenses be paid pursuant to annual appropriations. Your statement suggests that these changes are unnecessary and that there is adequate Congressional oversight and control under the existing system of operation by an agency in corporate form. What does the treaty provide in reference to the disposition of tolls received for operation of the Canal and other revenues derived from the operation of the Canal?

Answer. Article III 2(d) of the treaty states that the United States May "Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment." The treaty also states in Article XIII 4 that payments to Panama shall be paid out of Canal operating revenues. Since the Commission will be a United States Government agency under H.R. 111, the receipts and disbursement will be in accordance with U.S. laws and regulations. Presently, all cash receipts exceeding current operating requirements are deposited with the U.S. Treasury.

Question 21. What do the laws of the United States provide in reference to the disposition of funds received for The United States?

Answer. Funds received for the United States are deposited in the Treasury as miscellaneous receipts unless legislation provides for some other disposition, such as allowing a specific agency to deposit the funds in a Treasury Account for the express use of the agency carrying out its programs and activities 31 U.S.C. section 484.

Question 22. What was done with toll receipts and other revenues of the Panama Canal between 1914 and 1951?

Answer. All toll receipts and other revenues were deposited in the general fund of the U.S. Treasury, prior to the establishment of the Panama Canal Company on July 1, 1951.

Question 23. What is done with revenues received by the agency known as the Canal Zone Government?

Answer. The revenues received by the Canal Zone Government are deposited in the Treasury as miscellaneous receipts. Also see reply to question 27.

Question 24. In the absence of inclusion of a specific limitation in the appropriation act, would the approval of the budget program of a corporate agency limit the expenditures of the agency to the amounts shown in the budget program?

Answer. In the absence of the inclusion of a specific limitation in an appropriation act limiting corporate expenditures, a wholly-owned Government corporation subject to the Government Corporation Control Act, 31 U.S.C. section 841 et seq., would not be limited as a matter of law in its budget request. However, their budget would come under the annual scrutiny of Congress. It has been a practice to subject many Government corporations to specific limitations regarding both expenditures and types of expenditures in their specific appropriation acts. See, for example, the Tennessee Valley Authority and the Export-Import Bank.

Question 25. Can you cite any instances of limitation on expenditures (other than for administrative expenses) imposed on the Panama Canal Company in appropriation acts approving the budget programs of the Company?

Answer. To the best of our knowledge, expenditure limitations on past budgets of the Panama Canal Company have been restricted to general and administrative expenses, including the purchase of passenger motor vehicles.

Question 26. What part does the legislative committee having jurisdiction over a corporate agency perform in the process of consideration and approval of the budget program of a corporate agency?

Answer. The Government Corporation Control Act, supra, is not dispositive on this point, however, the legislative history of the Act does indicate that the House Appropriations Committee would play a major role in the consideration and review of the budget programs of wholly-owned Goverment corporations. In its report on that Act, the Senate Committee on Banking and Currency states the following:

> Section 104 provides for the consideration by the Congress of the budget programs and the enactment of legislation, if necessary, making available such funds or other financial resources as the Congress may determine. Under this procedure, it is contemplated that the budget programs as transmitted by the President to the Congress would include, as in the case of estimates of appropriations, language suitable for enactment as the authorizing legislation. Such programs would be referred to the House Committee on Appropriations and, after hearings, be reported to the House, in the form of (1) simple authorizing legistlation, showing that the Congress had considered and approved the budget program but not setting a limitation on the corporate financial activities other than that provided by substantive law, or (2) legislation incorporating such specific limitation as necessary to enforce the will of Congress in the carrying out of the corporate financial activities or to conform such activities to the general financial program of the Government. S. Rep No. 694 (1945), 1945 U.S.C.C.A.N. page 902

In practice, however, this has not always been the case. In many instances, legislative committees have held hearings concerning the content of the budget submitted by wholly-owned Government corporations. Therefore, we would recommend that the jurisdiction of the legislative committee over the budget of the Commission be specifically set forth in the implementing legislation. This would eliminate any jurisdictional problems in the future.

Question 27. The annual budgets of the Canal Zone Government show that until recently the Canal Zone Government paid all its revenues into the Treasury, but the budget now shows that the agency uses certain revenues derived from payments for services by other government agencies for payment of costs of the agency and pays only the balance into the Treasury. What is the legal authority for not paying all revenues of the Canal Zone Government into the Treasury?

Answer. Basically, the system provides that the Canal Zone Government income from all sources be deposited in the Treasury as miscellaneous receipts. However, recently certain funds received from other Government agencies for services performed for them by the Canal Zone Government on a reimbursable basis are used to pratially finance operations. Accordingly, appropriation requests are reduced to the extent such funds are available and used. The basic authority to use the funds for providing these services is Section 686, 31 U.S.C.

Question 28. Under H.R. 1716, is the Panama Canal Commission authorized to make payments to Panama out of funds received by the Commission without paying such funds into the Treasury and without such payments having been authorized by appropriation?

Answer. Sec. 203 of H.R. 1716 would authorize the Panama Canal Commission to make payments to Panama out of operating revenues wihtout the necessity of appropriating funds for much payments. Since the Commission would be organized as a Government corporation under H.R. 1716, all cash receipts, other than those needed for cash operating requirements, would be deposited in the Treasury as received and disbursements made as needed for operating expenses, including payments to Panama.

Question 29. While the Panama Canal was operated with appropriated funds, can you point out any instance in which the operation was embarrassed because of the application of the appropriation process for financing the agency?

Answer. We are not aware of any instance where the application of the appropriations process prior to 1951 "embarrassed" the Canal operations in the sense of a financial embarrassment of being unable to meet its obligations.

Adherence to the appropriations process did result in a change in a 1948 amendment to the Canal Zone Code (Public Law 81-223) which authorized the Governor the Panama Canal—

> * * * within the limits of available funds, to purchase or otherwise acquire equipment and within the Canal Zone to purchase or otherwise acquire, construct, repair, replace, alter, or enlarge any building, structure, or other improvement, when in his judgment, such action is necessary for the operation, maintenance, sanitation, of civil government of the Panama Canal or Canal Zone.

The legislative history of this change in the Canal Zone Code indicates that prior to its enactment the Comptroller General had questioned the use of appropriations for constructing buildings and other improvements because specific authority could not be cited in the Canal appropriation acts. To overcome this objection, specific authority for such expenditures was included in appropriations acts from fiscal year 1940 until the 1948 change in the Code.

Mr. HUBBARD. Thank you, Deputy Secretary of the Treasury, Robert Carswell, for your patience, for appearing here at 9 a.m. this morning and waiting until 4:25 in order to testify.

Our final witness for the day is Mr. Carswell, who has been in his Treasury post since June of 1977 and who has been representing the Treasury as a member of the Panama Canal Company Board of Directors for the last year.

Secretary Carswell, we hope you will provide us with some insights into some of the financial decisions involved in the implementing legislation, and how you see the Treasury interest affected by the legislation.

We await your statement.

STATEMENT OF HON. ROBERT CARSWELL, DEPUTY SECRETARY OF THE TREASURY

Mr. CARSWELL. Thank you, Mr. Chairman. I am pleased to be here today to testify before this subcommittee on the legislation to implement the Panama Canal Treaty of 1977 and related agreements, as embodied in the administration bill, H.R. 1716, and the similar bill introduced by Congressman Hansen, H.R. 454, and H.R. 111, introduced by Chairman Murphy for himself and others.

Others appearing for the administration have described for you the general purposes and objectives of the implementing legislation. So I will address myself, as you requested, to the issues of greatest concern to the Treasury and to the Treasury's role in the canal enterprise.

The Treasury's greatest concern is, of course, the efficiency and sound financial management of the canal, both now and after the year 2000 when management of the canal will be turned over to Panama. For the present, while the United States has primary responsibility for the canal's operation, it is important that the canal be administered in a businesslike, prudent, and fiscally responsible manner. The canal and its operations should be self-sustaining and should not be a drain on the U.S. taxpayer. At the same time, if the canal is to facilitate the continuing expansion of United States and world trade, it is important that tolls be as low as possible, while still covering costs.

To accomplish these objectives, it is important that there be financial accountability at all levels to provide an adequate basis for oversight by the executive branch and by the Congress. On the other hand, financial and management controls must not be so obtrusive as to interfere with operating efficiency and to unduly restrict flexibility to cope with unexpected developments.

It is also important that the groundwork be laid now for the canal's efficient management after the year 2000 and that those Panamanians who will have exclusive responsibility for the canal's operation after 2000 receive on-the-job management experience in the years ahead. It is my belief that a Government corporation as envisioned in the administration bill would best promote efficient and effective management.

Significant differences in operations and financial management flow from a decision to organize the canal enterprise as a U.S. Government corporation as proposed in the administration bill rather than as an appropriated funds agency as proposed by H.R. 111. The canal has been operated through a corporate form for the past 28 years and on a self-sustaining basis—without recourse to appropriated funds or drawing on its $40 million borrowing authority. Since our objectives for the future are the same, unless overriding considerations dictate otherwise, there would seem to be a presumption in favor of retaining the same form of organization. If the Canal Commission is established as a Government corporation, substantially the same accounting and management practices can be continued, subject to congressional oversight, and the Canal Commission will have the management systems, internal controls and disciplines to operate within its revenues. To achieve financial self-sufficiency, the Commission must be able to equate its costs with toll rates and traffic levels. It must also allocate its resources so as to achieve the optimum balance between present and future needs. As at present, profit and loss accounting policies would identify costs and revenues clearly, thus assisting in setting tolls at an appropriate level to cover all costs. Capital would be recovered from users rather than funded through appropriations. These practices offer the best guarantee possible that canal operations do not sooner or later become a burden on the American taxpayer. Furthermore, the corporate structure firmly establishes an appropriate vehicle for eventual full assumption of canal operations by Panama with the least possible confusion and maximum likelihood of continuous businesslike and efficient operation of the canal after the year 2000.

To assure that the canal is able to handle unpredictable changes in the volume of its transit business while continuing to operate within its revenues, the management of the canal will benefit from the flexibility and control over operations which is implicit in the structure of a government corporation. Even with the best of intentions, this flexibility is not necessarily present in the operation of a government agency in which a variety of goals, in addition to meeting break-even points and providing efficient service, becomes important. We must guard against the evolution of a situation in which appropriations to cover costs over time are considered separately from expenditures. That kind of problem is inherent in a government agency approach where there are loose ties between revenues and costs.

We believe the record of the Panama Canal Company shows that the corporate structure has been and continues to be the wise choice for control of canal operations, and that this form will be even more important to continued efficient operation of the canal in the future as the Panamanian Nation begins to have an increasing impact on the canal and its operating environment.

The administration bill assures continued congressional oversight of the operation of the Canal Commission although it does not subject the Commission to the annual appropriations process as would H.R. 111. The Government Corporation Control Act would require the submission of the Commission's annual budget to the Congress after review by the Office of Management and Budget, just as it has required the submission of the Canal Company's budget in the past. This submission will permit the Congress to review the budget in detail and to make modifications in it. In addition, the Commission would be audited by the General Accounting Office. The Comptroller General is required to report the results of such audits to the Congress. These review provisions have proven adequate to provide effective Congressional control over the operations of the canal in the past and, in our view, would continue to do so.

H.R. 111 proposes that membership on the Board of Directors of the Panama Canal Commission, with the exception of the Defense Department representative, be composed of private individuals. The administration bill grants the President the power to appoint board members. The administration has already decided that this power would be used to appoint to the board representatives of the U.S. Government agencies most interested in the efficient operation of the canal—the Departments of State, Transportation, Commerce, and Treasury, in addition to Defense—in order to assure U.S. Government policy control over the 5 to 4 bilateral board.

We believe the broad policy representation possible under the administration bill confers two principal advantages. First, it assures that U.S. Government policies and national interests are fully understood and weighed by the Commission in its policies and decisions. Representation of interested agencies provides greater assurance of direct communication and high-level agency involvement. Second, it provides a mechanism for carrying through Treasury's concerns that the canal be operated in a financially sound and businesslike manner.

Other differences between the administration bill and H.R. 111, which are of special interest to Treasury, concern payments of interest and amortization on the so-called net direct investment of the United States in the canal. H.R. 111 would continue the present requirement for interest payments by the canal enterprise into the U.S. Treasury and proposes that amortization payments be made annually as well. The administration bill calls for repeal of the present interest payments provision and contains no specific provision for amortization, although the existing statutory provision for payment of dividends to the United States would remain.

In light of the special circumstances projected in respect of tolls increases, expenses, and payments to Panama, we believe that foregoing the interest payments is consistent with the broad economic and foreign policy objectives of the United States.

The principal reasons for the administration's position not to require payments of interest and amortization are: (1) To insure so far as practicable that the Commission is and will remain self-sustaining for the life of the Treaty, and (2) to avoid an excessive increase in tolls.

In conclusion, we want for the long term: (*a*) An efficient, financially self-sufficient operation, (*b*) an adequately trained and financially responsible Panamanian staff and management able to assume responsibility in the year 2000, and (*c*) minimization of the cost to world commerce of the transition now and in the year 2000. I believe that the administration bill can achieve our objectives and will permit effective control and oversight by Congress.

Thank you. I will submit specific answers to the technical questions which you requested.

[The following material was received for the record:]

QUESTIONS SUBMITTED BY THE COMMITTEE TO THE TREASURY DEPARTMENT AND ANSWERS THERETO

Question 1. Explain (as specifically as possible) what the role of the Treasury Department and the U.S. Treasury would be in relationship to the canal under both H.R. 111 and H.R. 1716. For example, does the Department of Treasury have a view as to whether military vessels should pay tolls (as per section 232(b) of H.R. 1716), or whether a credit for the Commission with the Treasury will be allowed pursuant to section 412(c) of H.R. 111?

Answer. In addition to the matters discussed in the testimony, the Department of the Treasury has a number of specific financial relations with the Panama Canal Company. These are set out below.

(a) Company cash assets exceeding current requirements are desposited in Treasury, and are available to the Company without appropriations action but subject to Congressional review. This practice would continue under H.R. 1716. Under H.R. 111, all receipts of the Commission would be deposited in the Treasury as miscellaneous receipts and all expenditures would be made from appropriations.

(b) The Panama Canal Company is empowered to borrow from the U.S. Treasury a total not to exceed $40 million. Under H.R. 1716 the existing authority for borrowing up to $40 million will be continued. H.R. 111 would repeal the existing borrowing authority, and provide an emergency fund to which appropriations of $10 million would be authorized for fiscal year 1980, and such sums as may be necessary for subsequent fiscal years.

(c) Financing for various Canal Zone Government expenses is made from appropriations. Monies for financing various Canal Zone Government activities are repaid to the U.S. Treasury by deposits of revenues for Canal Zone Government services and by the Panama Canal Company revenues which are paid to the Treasury as reimbursements for the net cost of the Canal Zone Government. This practice would end under both bills because the Canal Zone Government will not exist under the Panama Canal Treaty of 1977.

(d) An annual interest payment on the net direct investment of the U.S. government in the Panama Canal Company is made to the Treasury. H.R. 1716 will repeal this interest payment requirement. H.R. 111 contemplates continuation of the interest payments.

(e) Dividends of the Panama Canal Company in excess of working capital requirements and plant replacement and expansion are paid into the Treasury, and are treated as a reduction in the U.S. net direct investment in the Company. The dividend provision would remain under H.R. 1716. H.R. 111 contemplates amortization of the U.S. investment in the Canal.

(f) Tolls computed but not collected on government vessels which transit the Canal are offset against certain Company obligations to Treasury. Under H.R. 111, the President would be authorized to require government vessels to pay tolls; H.R. 1716 requires government vessels to pay tolls. As a fundamental principle of sound budgetary accounting, all costs of an agency's activities should be reflected in the agency's budget. Adherence to this principle provides the basis for rational decisions regarding the allocation of scarce budgetary resources, and in this case, use of the Canal.

(g) The Panama Canal Company reimburses Treasury for $430,000 of the annual $2.3 million annuity payments made to Panama. This practice would be discontinued because the Commission will make Treaty payments to Panama from its revenues under H.R. 1716, or from appropriations under H.R. 111.

Question 2. What do you recommend as to specific methodology for the payments to Panama under Articles XIII and III of the Treaty?

Answer. Under both H.R. 1716 and H.R. 111 we would contemplate that annual payments pursuant to Articles 13 and 3 of the Treaty would be made to Panama at mutually agreeable intervals.

Question 3. What are the differend advantages and disadvantages attached to the covering of all unexpended funds of the Panama Canal Company and Canal Zone Government into the Treasury (per subchapter I of chapter 5, H.R. 111), as compared to transferring all remaining assets (including accounts) of the Panama Canal Company and Canal Zone Government to the Panama Canal Commission (per section 210 of H.R. 1716) upon its establishment? Are the provisions of sections 231 and 232, subchapter V, chapter 5, H.R. 111 adequately drawn to provide for the covering of all funds into the Treasury?

Answer. The difference between transferring assets to the Commission and covering funds into the Treasury reflects the fundamental difference between the two bills, namely whether the Commission should be a Government corporation or an appropriated funds agency. This difference is discussed in our testimony.

The advantage of transferring all remaining assets (including accounts) of the Panama Canal Company and the Canal Zone Government to the Panama Canal Commission (per section 210 of H.R. 1716) lies mainly in the prompt, accurate manner in which the transfer can be accomplished, that is, by amending the titles of the accounts. We see no disadvantage attached to this method. However, the provisions of section 231 and 232, subchapter I, chapter 5, of H.R. 111 would, in our view, require more complex accounting procedures. The legislation provides for the repeal of the Panama Canal Zone Government and the Panama Canal Company accounts after unexpended balances are covered into the general fund of the Treasury. No provision for the continuity of activities by the Panama Canal Commission is apparent. Note that a discrepancy exists between the language of section 231 and 232 and their section analyses. The bill refers to certain "unexpended" balances which would be covered into the Treasury on the effective date of the Act, while the section analyses refer to "unobligated" balances. Since the two terms are not interchangeable in Federal accounting parlance, the drafters' intent should be correctly reflected in the Act, and the section analyses should be conformed thereto.

Question 4. Since the Panama Canal Treaty requires that the canal be turned over to Panama "in operating condition and free of liens and debts," there was a good deal of debate in the Senate as to how the United States could protect the U.S. Treasury from absorbing costs of funds expended for emergencies and for capital programs. One reservation (introduced by Sen. Stone) addressed the issue of expenditure of funds for emergencies. How is the U.S. Treasury protected from absorbing extraordinary costs when the canal is transferred in the year 2000?

In order to protect the treasury, what recommendations do you have for the administration of the canal under the Panama Canal Treaty?

Answer. Article XIII of the Treaty provides that the Canal "shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree." There are some capital projects which are required to maintain the Canal in operating condition, and these would be necessary in order to comply with the Treaty. This will primarily involve routine replacement of existing plant and equipment, which the Commission should be able to finance from its own resources. However, many capital projects are discretionary in nature and represent real improvements over existing plant and provide benefits over an extended period of time. To the extent that such projects cannot be financed from Commission resources, financing of major projects in the latter category should be subject to special arrangements. Agreements on joint governmental financing, or assumption by the Government of Panama of the related liabilities after 1999, is a possible arrangement for such projects before they are started.

Under H.R. 1716, funds required to meet a catastrophe in excess of those available to the Commission through its earnings and its statutory borrowing authority would require Congressional action.

Under H.R. 111, funding in excess of that appropriated for maintenance and emergency funds would require Congressional action. Therefore, the Treasury would be protected against unbudgeted expenditures unless authorized by Congress.

Question 5. What views does the Department of Treasury have with respect to the provisions in the bills (sec. 240 in H.R. 111 and sec. 212 in H.R. 1716) with respect to reimbursements of one agency to another for services rendered. Are there any accounting or fiscal impacts to the Treasury that should be given attention?

Answer. Treasury endorses the concept of reimbursement for services between government entities. The reimbursement provisions of H.R. 111 and H.R. 1716 can be handled through routine accounting documentation. We see no accounting or fiscal impacts to the Treasury from these provisions.

Question 6. What views does Treasury have on the regime for claims presented in H.R. 111 and H.R. 1716? Given the provision of H.R. 111 which authorizes the Panama Canal Commission to settle claims only to a limit of $60,000, are there statutes, court decisions, or administrative interpretations which would provide pertinent background for the consideration of such a limitation?

Answer. There are two principal differences between the bills. First, the Administration's bill unlike H.R. 111 could limit claims arising from injuries in locks of the Canal by permitting the Commission to establish that the injury did not result from the negligence of officers or employees of the Canal. Second, H.R. 111 limits the authority of the Commission to settle claims to amounts of $60,000 or less. Governor Parfitt's testimony addresses the regime for claims in H.R. 111 and H.R. 1716 in considerable detail. The Treasury Department brings no special expertise to this discussion of the resolution of claims arising from injuries to persons or property.

While we have not independently researched the proposed $60,000 limit on the settlement of claims by the Commission, which we understand has been drawn from a pre-1951 provision of the Canal Zone Code, we note that imposition of the limit would represent a significant departure from the current requirements of Canal Zone Code which permit the Commission to settle claims without limit. Further, the imposition of a new ceiling on the settlement authority of a Government agency appears to be contrary to the recent trend of Congressional action in this area. For example, in 1966 the Congress amended 28 U.S.C. Section 2672, which provides for the administrative adjustment of tort claims against the United States, from a provision which had limited the settlement authority of Federal agencies to claims for money damages of $2,500 or less to remove the limit entirely, provided that awards in excess of $25,000 were issued only with prior written approval of the Attorney General or his designee. We also note that a limit of $60,000 appears to be very low compared to the claims the Canal Company has recently had before it. An unnecessarily restrictive settlement authority may not be consistent with the development of the Commission's ability to manage its affairs independently in the future and may prove unfair to Canal users.

Question 7. Is there a need for the continuation of the concept of U.S. net direct investment in the canal enterprise?

If there is a need to continue such a concept, how should assets transferred to Panama and written off against the U.S. net direct investment in the canal enterprise be evaluated? What will be the remainder of the net direct investment figure after subtraction of the worth of transferred assets at book value? at market value? or at other evaluations? (See p. 123 of hearings of the Subcommittee on Panama Canal, November 30–April 1, 1977).

Answer. A principal function of the "net direct investment" concept, as it appears in the Canal Zone Code, is to determine the base against which interest due Treasury is calculated. Since the Administration recommends that interest payments be discontinued, the Code provisions regarding net direct investment will no longer have policy significance. Continuation of the concept, however, is provided in the Administration bill to maintain accounting consistency regarding U.S. Government equity in the Canal.

The Administration intends to use net book value of the assets to be transferred to Panama as the basis for writing them off against U.S. net direct investment, as was authorized by Congress in the implementing legislation for the 1955 treaty. Since the Administration proposes that interest payments based on net direct investment be discontinued, however, these changes in net direct investment are accounting transactions without policy significance.

Any attempt to calculate a market value of the Canal would necessarily be highly speculative, since such a calculation would depend upon assumptions made concerning future traffic flows, operating costs and toll levels.

Mr. HUBBARD. Thank you, Deputy Secretary Carswell. You've been a member of the Board of Directors of the Panama Canal Company. How involved have you been in the activities of the Board?

Mr. CARSWELL. Well, I went to Panama for 3 days with them, about 3 months ago now, and I have been to Board meetings and I have consulted from time to time with members of the Board and of other agencies and of the Company in between Board meetings. I have not spent any huge percentage of my time on it, but it has not been noninvolvement.

Mr. HUBBARD. Have you attended all the meetings convened since your appointment to the Board?

Mr. CARSWELL. I did not attend the meeting 2 weeks ago in Panama.

Mr. HUBBARD. The Company, I understand, has a higher than usual cash balance on hand due to the transit of Alaskan oil.

What has been your view as to whether the excess cash balances should be placed in the U.S. Treasury to reduce the investment of our Government in the canal enterprise?

Mr. CARSWELL. Of course, the cash is in the Treasury now in the sense that receipts from the Canal Company are on deposit at the Treasury, and it's just like any other cash held by the Treasury.

So it really doesn't make a difference whether you declare a dividend now or you don't, because you still have the money. But before the commission form takes effect, I think the board can, should, and will consider whether a dividend should be declared of excess cash, if there is excess cash.

Obviously the Commission will need some working capital, so I don't think you could declare a dividend of all the cash that is now in the Panama Canal Company, but it may well be appropriate to declare a dividend of some of it and recover some of the investment.

Mr. HUBBARD. That would be a good idea, wouldn't it?

Mr. CARSWELL. To the extent that it wouldn't disable the Commission from operating, yes, it would be.

Mr. HUBBARD. Under one interpretation of the administration bill, payments under article III and article XIII of the Panama Canal Treaty would be paid directly to Panama without going through the U.S. Treasury; is this correct?

Mr. CARSWELL. I am sorry.

Mr. HUBBARD. Under one interpretation of the administration bill, payments under articles XIII and III of the treaty would be paid directly to Panama without coming through the U.S. Treasury.

Mr. CARSWELL. It depends, I suppose, on where the cash of the Canal Company is kept. The payment I guess under one interpretation would be made by the Commission, because it would be an expense of the Commission, that is, the service charges and the $10 million annuity at least, are an expense of the Commission.

The cash itself would be on deposit, I assume, with the Treasury.

Mr. HUBBARD. But these payments would be paid directly to Panama without going to the Treasury. I believe that those with you would be in agreement that that is accurate.

Mr. CARSWELL. Cash comes in from tolls, goes into the deposit accounts of the Canal Commission—it will after the event—and those Commission deposits are with the Treasury, and in that sense the Treasury has whatever the cash is and then from those accounts the Canal Company will pay Panama.

Mr. HUBBARD. Is the Treasury Department aware of any other instances in which money is retained by U.S. Government agency and subsequently has been paid to a foreign government without an appropriations act providing for such by Congress?

Mr. CARSWELL. I don't know. There are plenty of instances where U.S. Government corporations obviously make payments out of receipts that they collect. I don't know whether any of them were ever paid to a foreign government.

I'm just not familiar with all the U.S. Government corporations. But, for instance, our banking agencies—the Comptroller of the Currency, for instance—gets receipts from the banks, assessments, and then pays his bills. And they never are paid by the Treasury as such.

Mr. HUBBARD. Would you please provide for the record any instances at all like this situation, where the Treasury Department——

Mr. CARSWELL. You mean where a Government corporation——

Mr. HUBBARD. Right, were money retained by a U.S. Government agency has subsequently been paid straight to a foreign government.

Mr. CARSWELL. We'll certainly look for that. I am not quite sure——

Mr. HUBBARD. Without an appropriations act providing for such.

Mr. CARSWELL. I am just not quite sure what kind of accounting we would have to pull that out, but we will look for it.

[The following material was received for the record:]

INSTANCE IN WHICH MONEY RETAINED BY A U.S. AGENCY IS SUBSEQUENTLY PAID TO FOREIGN GOVERNMENTS

The Panama Canal Commission will be a unique Federal entity in the sense that it will be the only Government entity whose functions stem from a bilateral treaty between the U.S. and a foreign government and through which payments are made to that government from operating revenues. There is no other U.S. Government corporate entity whose roles and missions involve similar payments to a foreign government from program-generated revenues. The present Panama Canal Company is now making such payments to the Institute of Hydrolic Resources and Electrification (IRHE), an autonomous agency of the Panamanian Government, in return for purchases of electrical energy. These purchases and payments are made under a 25-year contract initiated in 1965.

Although not strictly analogous to the Panama Canal Commission because its payments are in the form of loans, the Commodity Credit Corporation offers one instance in which money returned to a U.S. agency and not appropriated is paid to foreign governments. In this case, repayments under Pub. L. 480 Title I made to the Commodity Credit Corporation are used by that Corporation for new loans to foreign governments without a new appropriation. The repayments supplement appropriated funds within a total authorized program level. Similarly, the Eximbank makes loans to foreign entities from repayments on earlier lending which are available subject to annual limitations.

Moreover, there are numerous instances where revolving-fund financing is used for reasons similar to those used in the Panama Canal Commission account structure, although the payments do not go to foreign governments: there is a continuing cycle of operations in which outlays generate receipts, most of which come from a non-Federal source; the program is substantially self-sustaining; and there is a substantial need for flexibility to meet unforeseen requirements.

Mr. HUBBARD. OK, fair enough. Now I have my last question. I think it is important that we discuss the interest payments to the Treasury that are discontinued by the administration bill. Has the Department a figure for the total of potential funds for the U.S. Treasury foregone by discontinuing the payments?

Mr. CARSWELL. I don't think we have any difference with the figures that I just heard from Mr. Staats—today it's $19 million; if you assume that that is the figure that would continue, then 22 years times $19 is $418 million.

There are all kinds of ways you can figure out what that interest should be based on. We are going to transfer to the Panamanians some assets when the treaty comes into effect a year from now, October 1. If you subtracted the value of those assets from the $319 million now the net book value and only paid interest on what was left, then that interest figure would come down a bit.

On the other hand, if there is some other type of accounting used, as General Staats was suggesting you might want to consider, I suppose the figure could change again. And it also will depend in part on what the Treasury's long-term borrowing rate was, so I don't think you can give the right answer for any of this.

But based on the assumptions that General Staats used, I think $418 million is as accurate a figure as you are going to get.

Mr. HUBBARD. Congressman Bauman.

Mr. BAUMAN. Mr. Secretary, you say in your statement that these practices—referring to the Company's operations and their proposed continuance, as you suggest—offer the best guarantee possible that the canal operations do not later become a burden on the American taxpayer. In another part of your statement you suggest that the interest shouldn't be paid.

Isn't the $400 million that the Treasury doesn't get a burden on the taxpayers?

Mr. CARSWELL. Obviously a decision was made at the time that the treaty was negotiated to try to create an entity that would work in the future, and to the extent we add to its expenses the chances of this happening, of its continuing to exist over to the year 2000 as a self-sustaining independent government corporation are impaired.

Mr. BAUMAN. We are not adding to its expenses, we are subtracting, if you take out the interest.

Mr. CARSWELL. We are relieving them of that burden. One has to look at it with a short- or a long-term view. Until 1951 there was no interest charged; I suppose there were in those years good and sufficient policy reasons why the United States decided not to put interest costs in the toll base.

Then after that it was decided that those tolls were too low, and that one way of getting those tolls up a little was to put the interest into the base. It started off rather small. In the beginning, in 1951, the interest rate was about 2 percent; come up through the years and now we are at a level of around 19 million.

We have had all kinds of policies about what sort of burden the tolls ought to bear in terms of paying interest to the United States.

Our decision—the administration decision now—is that probably a prudent thing to do is not to continue to impose the level of burden that we are now at in the years ahead.

It's a judgment issue.

Mr. BAUMAN. It's a judgment issue, but it's a judgment that was made after the assurance was given repeatedly by administration officials that this transaction wasn't going to cost anything. And I don't particularly focus my remarks toward you, because your statement bears the testimony we have heard essentially from every administration witness—they have all raised the same argument.

But it seems to me that the entire presentation, once again, is cloaked in terms of self-sufficiency and no cost to the taxpayer, when we just got through with the previous witness telling us that it might cost $3 billion after we get through sifting through all of the money that is extraneous to the toll income.

I'm not picking at you, because you just happen to be the witness at the moment, but I have heard this statement so many times I just wish somebody from the administration would come up here and tell us honestly that this is going to cost the taxpayers a hell of a lot of money and that they didn't admit it before the treaties.

And I am really sick of hearing this repeated over and over by every one of our witnesses.

And if that is the kind of statement we are going to get from now on, we might as well just hand them all in, because I have heard that statement 25 times now, and it's not true.

Now, forgive me for taking it out on your hide, but you just happen to be here.

Mr. CARSWELL. I really can't speak for what others have testified here. I do know that Tony Solomon, when he testified in the Senate, specifically stated this interest position. And the vote in the Senate came after that.

Now, obviously it isn't in the treaty as such—you are right, in that sense; it is within the power of the Congress now to do what you are suggesting.

But the administration's position on this point——

Mr. BAUMAN. You are placing this subcommittee and the full committee in the House—and the Senate, God forbid, too—in the position of having to dishonor a commitment your administration made on the cost of this treaty. We are being asked to bail you out; we are being asked to vote and go back and explain to our constituents why the statements were not true when Jimmy Carter and Mr. Vance and all the rest said it wasn't going to cost $1. I sat here and listened to all that bunk.

You can read our hearings; there was no mistake.

You represent the Treasury, and you should know—you agree with Mr. Staats—and you are asking us to bail you out.

The least you can do is to be honest and lay it all out and tell us what it is going to cost and stop dancing around with all these phrases about self-sustaining. That is baloney—and you know it.

Again, I am sorry to have you take the brunt of it, but I have been listening to it for two solid weeks—and all of us have—and we know it isn't true.

Forgive me at this late hour, I have had a long day, it took me 3 hours to drive in this morning.

And I apologize for the outbreak, Mr. Chairman.

Mr. HUBBARD. That's all right. Let us all have a chance to do that every now and then.

Congressman Joe Wyatt—no question. Congressman Bill Carney.

Mr. CARNEY. Yes, I would like to question you on your statement. At page 5 you are talking about the membership of the Board of the Panama Canal Commission. And the administration has already decided just how it will be used to appoint four representatives, in particular from the State Department, Commerce, Transportation, and Treasury—and, as we all know, the Defense Department will be in on either bill.

One, I question the wisdom of that, because I think with the Department of State providing one of the members, the power would go 5 to 4 to Panama. But nonetheless, I am asking—do you imply that they will vote in a bloc?

Mr. CARSWELL. I think it is clear—I tried to discuss a little bit about how the budget of the Commission would work. And the budget of the Panama Canal Commission would be submitted through a normal Government corporation budgeting process. That means that it would go through the Office of Management and Budget and it would be treated like any other Government corporation is today.

And while the Board of Directors would be voting on that, I assume that they would be bound, being Government officers, by whatever decision the Office of Management and Budget came up with as to what the budget of the company should be, and that that would be a Presidential decision, and that at least as to that basic financial structure, you don't have to worry about splits among the agencies or whether you feel, which I don't agree with, that the State Department might or might not support sound financial management—I think it obviously will.

But, in any event, on the question of how the financial management would go, there isn't any real room for basic splits. There are on policy questions, I think.

Mr. CARNEY. Would you suggest then, if the House of Representatives were to go with the concept of H.R. 111, as far as the composition of the Board is concerned, that we should also include in that legislation that that membership should and in fact are bound to vote en bloc?

Mr. CARSWELL. I really am not clear on the concept behind having the other four—that is, one from Defense and four coming from outside the Government—I am not sure the reason why that is in H.R. 111. Obviously it creates problems as to whether they will vote together on any particular issue or whether they will vote for Panama. You don't know who is going to be on that Board, and even when he is on the Board, he's then been appointed and he is not under the same discipline that I am when I serve on a Government corporation board.

Now, once you start talking about bloc voting of that sort of individual, I just don't know how it comes out, because I don't understand the concept of why one would want to have our four representatives, representing diverse interests, that you wouldn't necessarily be able to have consider the United States as a whole.

Mr. CARNEY. But you are saying, on the other hand, that it would guarantee the bloc vote if we go with the administration's concept.

Mr. CARSWELL. On significant issues, yes; I don't think there is any—who knows, somebody can go crazy—but normally speaking, yes.

Mr. CARNEY. The point that I am trying to bring out is that I think that the Congress, and particularly the House, would like to have some kind of control of what goes on in the next 20 years in light of what has gone on in the last 3 or 4 years down at Panama.

And if we were to go that way, would you suggest that we make sure that those representing us instead of the administration vote in a bloc?

Mr. CARSWELL. Again, because I don't understand the concept, I hesitate to advise on whether you want to tie them—it's kind of inconsistent with the idea of putting private diverse interests on the Board.

But I suppose that is one way one could go.

Mr. CARNEY. There is really no need to have a Board made up of five people, then. What we can do is have the President of Panama and the President of the United States make up the Board and the President of the United States can veto the President of Panama any time he wants to.

Mr. CARSWELL. You could, but I think you do want responsible people working on the development of a budget here, because there are serious financial issues—setting the toll rate is very difficult, and will be through the years; there are diverse interests, ranging from defense interests to financial interests. And I think you do want to have a mechanism where those are handled at a high level by people who you can point to—call up here and ask them why they did whatever they did.

In that sense a board is a good mechanism and should serve us well through the years.

Mr. CARNEY. I agree with you, too, on that. And that points to the fact why the Members of the House of Representatives should have someone on that Board, because we are equally concerned as is the current administration. But with the administration's bill we would have virtually nothing to say about what goes on with the Panama Canal. That's why I think H.R. 111 addresses itself to it.

I have no further questions, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Carney. I believe Bernie Tannenbaum has a couple of questions and that will complete our questions of this cooperating witness.

Mr. TANNENBAUM. Just one point of clarification. You agree that interest has been a cost since 1951, for the last 28 or so years, but you differ from Comptroller General Staats' statement on page 8 in which he says: "From inception, interest has been charged on the U.S. investment in the Panama Canal enterprise."

Could you just explain why you say that?

Mr. CARSWELL. I must say, I read his statement when he was reading it. As I understand it—maybe he is talking about the way he handled his accounting at the GAO; that is, they may have imputed interest to the base of the investment. But I don't think it was in the toll base.

Mr. HUBBARD. I think Mr. Whitman can explain it.

Mr. WHITMAN. To the best of my knowledge, from the very first time the President set the toll, a factor for interest has been included in the rate. It was stated in the formula developed by Dr. Johnson at the University of Pennsylvania, that tolls should be set at a rate sufficient to recover operating costs, including interest, which then was about 3 to 3½ percent. That continued over the whole time that the appropriated fund agency operated the canal.

Mr. CARSWELL. All I can do is go back and get it for the record. All I know is—what we are on now, the 1951 addition of what's going on—that resulted in a payment of interest on $319 million, or whatever the number is.

Mr. WHITMAN. It is stated differently now and the mechanism for getting it into the Treasury is different now, because back then all revenue of the canal was paid into the Treasury, so there wasn't any point in labeling as you made the payment—this is interest and this is something else.

Mr. CARSWELL. Our books are such that for the early years we can't even tell what the right amount of the investment was, so it would be, for some periods at least, difficult to know what interest would have been paid.

Mr. WHITMAN. They had a figure—whether or not it was the right one, they computed interest——

Mr. CARSWELL. Well, we had serious difficulty working this stuff up—you know, in the very early years.

Mr. WHITMAN. The annual reports of the old Panama Canal agency show the interest paid in each year of operation.

Mr. CARSWELL. I stand corrected.

[The following material was received for the record:]

INTEREST PAYMENTS

The Panama Canal Company has provided additional information to the Department concerning interest payments by the Company and its predecessor organizations. The issue is complicated and the past situation is not as clearly delineated as it might be.

From inception until the President transferred the canal to the Panama Canal Company by Executive Order in 1951, there was no statutory requirement that interest on the investment in the canal and directly associated equipment be paid to the Treasury, and no cash payments specifically for interest on such investment were made to the Treasury. The Panama Railroad Company was treated slightly differently at certain periods as outlined below.

The Spooner Act of 1902 authorized the President to purchase assets of the New Panama Canal Company, to purchase the capital stock of the Panama Railroad Company, and to negotiate for control of the right of way for a canal. The Secretary of Treasury was authorized to issue bonds to finance the purchase and construction of the canal.

After its acquisition by the United States, the Panama Railroad Company was apparently required to issue notes to the Treasury in return for appropriations specifically for its activities. However, no principal and interest payments were required after March 4, 1911, and the notes were cancelled in 1928 (48 USC 1333).

A Special Commissioner, Emory R. Johnson of the University of Pennsylvania, was appointed to recommend an appropriate toll rate for the Canal once it opened. Mr. Johnson performed a comprehensive study of the potential traffic in the canal and recommended to the President that the toll be $1.20 per net vessel ton for laden commercial vessels with a 40 percent reduction for ships in ballast.[1] President Taft accepted the recommendation and established the tolls at the recommended rates by proclamation on November 13, 1912. In making his recommendation, Mr. Johnson incorporated a component in his calculation of an appropriate toll that would allow toll revenues to include an amount determined by applying an interest rate of 3 percent on the $375 million in capital invested to that date. A 3 percent figure was apparently used because it approximated the interest rate on U.S. Government bonds which were issued to finance the construction of the canal.

The toll was a flat amount and did not fluctuate according to the expenses of the canal operation, and no modification was made to reflect any interest component based on the capital expenditures subsequent to 1912. The tolls were not changed until 1937 and thereafter in 1974 and 1976. The 1937 change, a nominal reduction, was primarily to account for differences between the Canal method of measurement of vessels and a method based on registered weight.

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[1] Johnson, Emory R.; *Panama Canal Traffic and Tolls,* Aug. 7, 1912.

Prior to the 1950 Act, the Panama Canal agency, predecessor to the present corporation, was required to deposit all revenues directly into the Treasury Department. The agency was appropriated funds for its operation. Toll revenues were deposited in the Treasury without reference to the cost components used to establish toll rates.

The accounting system of the Panama Canal agency calculated interest at 3 percent on the amount of capital invested and this figure was shown in an exhibit in the Annual Report of the Governor after net earnings. According to the Annual Reports, the interest calculation was included to illustrate what the effect of interest would have been had it been charged by the United States Government and for comparative purposes had the canal been run on a private corporation basis.[2] The accounting procedures as modified in 1932 calculated interest compounded at a 3 percent rate on construction funds spent to the end of fiscal year 1921 and capitalized this as interest during construction in the total capital investment account on the balance sheet. The reason for using a compound rather than simple interest calculation is not clear and was later questioned by the Bureau of the Budget. Capital interest at the 3 percent rate subsequent to 1921 was considered "a statistical charge to operating expenses for comparison with net revenues." [3]

In 1948, the Panama Railroad Company, a U.S. Government-owned corporation operating under the aegis of the Panama Canal Agency, was in effect reincorporated pursuant to the Government Corporation Control Act of 1945 (Canal Zone Code, Title 2, Sec. 62; 62 Stat. 1075). In conjunction with this reincorporation, a new section was added to the Canal Zone Code which required that interest be paid on the amount of net direct investment of the United States as evidenced by a transfer receipt for the railroad company issued upon reincorporation plus subsequent appropriations or transfer of assets. The initial transfer receipt in the amount of $1 was to be delivered to the Secretary of the Treasury acknowledging the transfer of net assets from the old Railroad Company to the reincorporated Railroad Company. Thus, the Panama Canal Railroad Company was required to pay interest as calculated by the Secretary of the Treasury on future increases in direct investment after 1948.

The 1950 Act (Canal Zone Code, Title 2; 64 Stat. 1038) changed the name of the Panama Railroad Company to the Panama Canal Company and authorized the President to transfer the canal and related facilities and appurtenances to the Panama Canal Company. Interest would be charged according to provisions of the 1948 Act once the canal and associated equipment were transferred to the company. The president subsequently transferred these assets by Executive Order in 1951. The 1950 Act also required by statute that tolls include interest costs. The facilities related to the civil government were separated, and no interest payments were required on those facilities. It should be noted that the 1950 Act stipulated that the capital investment for interest calculations should not include interest costs during construction which had been capitalized as mentioned above.

In summary, an imprecise sort of interest on the original investment in the canal might be considered to have been paid during the period 1912 to 1951 in the sense that the toll revenues were originally set assuming an interest calculation. The basic investment used in the toll calculation recommended in 1912 was not adjusted for subsequent capital investment. Interest payments were not required by statute nor did the Treasury charge interest on the funds appropriated for the Panama Canal and associated equipment during the period 1912–1951. As mentioned above, the Panama Railroad Company was required to pay interest on future investment or transfer of assets after 1948.

Mr. HUBBARD. Any other questions?

Mr. TANNENBAUM. You don't have any magic formula to keep the toll rates down to the administration's 14-percent figure rather than the 35-percent figure, other than charging the differential to the general public, do you?

Mr. CARSWELL. Well, it depends on how you put it. I think the chairman was careful to say "forgo receipts" when he discussed it, and you say "charge the general public." It's the same interest, and, depending on how you look at it, we are not going to get the receipts if you follow the administration bill.

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[2] The best explanation of this system can be found in the Annual Report of the Governor of the Panama Canal for the fiscal year ended June 30, 1933. p. 120–145.

[3] *Ibid*, p. 120.

Mr. TANNENBAUM. The difference comes out of the taxpayer's pocket—there is no question about that.

Mr. CARSWELL. No, it means we essentially don't get the receipts, and it means then that if we want to use those receipts for something up here, I guess we have to pay for them in taxes.

Mr. TANNENBAUM. Thank you.

Mr. HUBBARD. Our last witness has been Deputy Secretary Robert Carswell; we appreciate your being here and your information Mr. Carswell.

An announcement of future hearings that will be held. Our next hearing will be Wednesday of this week, February 28, I believe it is, at 10:30 a.m. in room 1334 in the Longworth Building, the normal meeting place for our full committee, and subcommittee.

[The following was submitted:]

PANAMA CANAL TRAFFIC AND TOLLS

By Emory R. Johnson, Special Commission on Panama Canal Traffic and Tolls

CHAPTER XII

PANAMA TOLLS I

PRINCIPLES AND CONSIDERATIONS THAT SHOULD CONTROL IN FIXING TOLLS

The Panama Canal has been constructed and undoubtedly will be operated primarily to promote the commerce and industry of the United States and the world. In deciding upon the policy to be adhered to in the administration of the canal the commercial usefulness of the waterway should be given first consideration. Tolls may wisely be imposed to secure revenue, but the transit dues must not prevent the canal from fulfilling its primary function. The tolls should not only be within what the traffic will bear, but should be low enough to permit commerce to derive substantial benefits from the canal.

The canal to be commercially self-supporting

The canal should however, be required to yield such revenues as can be secured without unduly limiting its usefulness. The United States has made a heavy investment, and will have large current operating and maintenance expenses to meet year by year. Business prudence and political wisdom demand that the canal shall be commercially self-supporting, provided revenues large enough to enable the canal to carry itself can be secured without unwisely restricting traffic. This principle was advocated by the President in his message of December 21, 1911, in which he stated:

> I believe that the cost of such a Government work as the Panama Canal ought to be imposed gradually but certainly upon the trade which it creates and makes possible. So far as we can, consistent with the development of the world's trade through the canal and the benefit which it was intended to secure to the east and west coastwise trade, we ought to labor to secure from the canal tolls a sufficient amount ultimately to meet the debt which we have assumed and to pay the interest.

The canal will cost the United States Government $373,000,000, much of which has been or will be, secured by borrowing funds. The interest and principal of this debt must be paid either from funds secured by general taxes or from the revenues derived from canal tolls. It seems wise and prudent that the United States should adhere to sound business principles in the operation of the canal and in levying tolls. Public expenditures are increasing rapidly. Funds are required in increasing amount for the promotion of the public health, for irrigation and reclamation, and for maintaining the military power and naveal prestige of the United States. Large expenditures upon rivers and harbors are urgently needed. Taxes must inevitably increase. The demands upon the United States are certain to be much greater in the future than they have been in the past, and it does not seem wise for the Federal Government to construct and maintain at the expense of the general budget such a costly public work as the Panama Canal. Those who derive immediate benefit from the use of the Panama Canal may properly return to the Government a portion of the profit secured from using the canal, provided this policy can be followed out without burdening commerce.

In reaching this conclusing the fact has not been overlooked that the people of the United States will have in the Panama Canal a great military and naval asset. The naval advantages derived from the Panama Canal will be of such value that many men regard the waterway primarily as a military asset, as a work that must have been, and would have been executed regardless of its commercial usefulness. This is an exaggerated view of the military, as compared with the commercial, value of the canal, the chief purpose of which is to shorten the routes of ocean commerce. However, the Navy will be very definitely benefited. The mobility of the fleets will be increased, and they will be able to defend our now widely separated seaboards more economically and more effectively. It is often said that the canal will double the efficiency of the Navy. This may be an overstatement of the facts, but is probably approximately correct.

The strong fortifications that will be maintained at the Atlantic and Pacific termini of the canal will enhance its value to our Navy. The Canal Zone will be a strong naval base from which our fleets may go forth to strike a blow, and to which they may return, confident of being protected while coal and other supplies are being secured and while the vessels of of the fleet are being given necessary repairs. It would be difficult to overestmate the importance to the United States of having strong fortifications and a secure, well-equipped naval base at the sole gateway between the Atlantic and Pacific.

The canal, however, will add to our military expenses as well as to our fighting strength. To maintain strong fortifications at the Altantic Pacific termini of the canal, manned by at least 6,000 troops, to keep 1,200 marines stationed on the Isthmus, to support naval coaling depots at Cristobal and Balboa, and dry docks and repair shops for the Navy at Balboa, and to provide and operate the transports and colliers which the Army and Navy will need to have to maintain the military establishments on the Isthmus will require an annual outlay quite equal to the cost of operating the canal and paying interest on the investment. The necessary addition to out military and naval expenses (which are already heavy in comparison with the expenditures for civil affairs) consequent upon the utilization of the canal as a military asset will be so large as to emphasize the advisability of adopting the policy of making the canal self-supporting as a commercial highway.

The policy of having the annual operation, maintenance, and interst charges borne partly by the military and naval budgets and partly by the revenues derived from tolls has some advocates. Those who hold this view contend that, inasmuch as the canal is a benefit to the Navy and to the Army as well as to commerce, a part of the canal expenses should be charged against the appropriations made for the support of the Army and Navy. Two objections may be made to this policy.

1. The canal, as has just been stated, will bring about a large increase in the annual Army and Navy expenses.

2. The Navy is maintained and the canal is fortified not only to enhance our military power but also to protect American commerce on the high seas and to facilitate the extension of our foreign trade.

Commerce will derive large indirect benefits from the addition which the canal willl make to our military strength and naval efficiency. The policy of charging tolls upon shipping large enough to produce a revenue equal to the operating, maintenance, and interest expenses will inflict no injustice upon those who use the canal. It will be borne in mind, of course, that the Panama Canal, at least during the early years of its operation, will be used more largely by foreign ships than by American vessels and that the commerce passing through the waterway will, for some years to come, be more largely foreign than American.

Revenue and rate of tolls that will make the canal commercially self-supporting

The annual revenue ultimately required to make the canal commercially self-supporting will be about $19,250,000. It is estimated that the operating and maintenance expenses will amount to $3,500,000 yearly and that $500,000 will be required for sanitation and for the government of the zone. The interest on $375,000,000 at 3 per cent per annum will amount to $11,250,000, and the treaty with Panama guarantees an annuity, beginning in 1913, of $250,000 to the Republic of Panama. The sum of these four items is $15,500,000. If to this there be added 1 per cent per annum on $375,000,000 to accumulate a fund to amortize the investment the total annual expenses will be $19,250,000.

In deciding what tolls shall be charged for the use of the canal, the fundamental question is whether a system of charges can be devised and levied that will ultimately yield about $19,250,000 per annum without unduly burdening American trade and without seriously limiting the ability of the canal to compete for traffic against the routes via the Straits of Magellan, the Cape of Good Hope, and the Suez Canal.

The investigation of the traffic available for the use of the canal led to the conclusion that about 10,500,000 tons net register of shipping will pass through the canal during the early years of its operation. The rate at which the Suez Canal tonnage and the commerce of the world is increasing indicates that an increase of at least 60 per cent in the traffic of the Panama Canal may be expected during the decade 1915–1925. It is thus probable that there will be 17,000,000 tons of shipping using the canal during 1925. An increase of 60 per cent during the second decade of the canal's operation would bring the traffic up to 27,000,000 net register tons at the end of 20 years. These estimates are believed to be conservative. If the traffic of the Panama Canal shall be equal to these estimates, it will be possible to secure from moderate tolls enough revenues to enable the canal to be commercially self-supporting. If tolls of $1.20 per net vessel ton, or charges equal to those which the Suez Canal will impose on and after January 1, 1913, are levied for the first 10 years on all shipping using the Panama Canal, the annual receipts at the end of the first decade will more than cover the estimated operation, maintenance, zone sanitation and government, Panama annuity, and interest charges. It will be possible within 10 years after the opening of the canal to begin the accumulation of an amortization fund. If a toll of only $1 per net ton is maintained during the second decade of the canal's operation, the annual receipts will be large enough to meet operating, maintenance, zone sanitation and government, interest, and Panama annuity expenses, to set aside a liberal amount for the amortization of the investment, and to furnish several million dollars per annum for the betterment of the canal, which by that time will probably be necessary.

A toll of $1.20 per net vessel ton would, in the case of the ordinary cargo steamer, impose a charge of 44 to 80 cents per ton upon the freight carried. This is due to the fact that freight vessels can carry from 1½ to 2¾ tons of cargo for each net register ton—the ratio of freight tonnage to vessel tonnage depending upon the type of ship and the character of the goods carried. A toll of $1.20 per net ton would add about 2 to 4 cents per hundredweight to the freight rate.

After the Panama Canal is opened, it is probable that some low-grade bulk freight may be carried as full-vessel cargoes between our two seaboards at rates as low as $5 per weight ton. The charges on high-class measurement freight will probably be from $12 to $15 per ton. If these are the rates charged, a toll of $1.20 per net ton on vessels passing the Panama Canal would add about 10 or 12 per cent to the rate of freight charged on low-grade bulk commodities and about 4 or 5 per cent to the rate of freight on high-class goods shipped as measurement cargo. Tolls of this amount, whether borne by the shipper or the carrier, would not materially restrict the use of the canal nor would such charges be a serious burden upon traffic. Of course, any toll is a burden that must be borne either by the carrier, the shipper, or the producer; but, if the toll charged neither limits canal traffic nor hinders the healthy and profitable extension of trade, the burden is one which the Government may properly impose in order to secure the revenues required to meet canal expenses. Taxes, as well as tolls, are a burden; and it is probable that the canal revenues can be secured with minimum public burden by taking, as canal revenues, a portion of the profits derived by those that directly use the canal.

The different interpretations given the Hay-Pauncefote Treaty

There has been much discussion of the policy of exempting American ships from the payment of Panama Canal tolls. Those who favor this policy believe it to be permitted by the Hay-Pauncefote treaty, Article III, section 1, of which stipulates that—

> The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, to that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

Some advocates of free tolls for American vessels are of the opinion that the coastwise shipping of the United States can be exempted from Panama tolls without discriminiating against foreign shipping, because vessels under foreign flags are not allowed to engage in the coastwise trade of the United States. Being excluded from our coastwise trade, such vessels, it is contended, are not discriminated against by favors granted to our own ships. Other advocates of free tolls for American shipping so interpret the Hay-Pauncefote treaty as to exempt from the restrictions of Article III, section 1, all American ships—those engaged in foreign commerce as well as those employed in our coastwise trade. Those who give the treaty this interpretation hold that Article III of the convention formulates the rules which the United States adopted for the use of the canal by all other nations than the United States, i.e., that the United States agreed to maintain the canal as a highway to be used by all foreign nations under terms of entire equality as long as such nations observe the rules laid down by the United States.

Among those who interpret the Hay-Pauncefote treaty as requiring the payment of the same Panama tolls by all vessels, both American and foreign, are advocates of the policy of relieving the American coastwise shipping of the burden of canal charges by the repayment from the United States Treasury to the owners of American vessels using the canal the amounts collected as tolls. The result of this policy would be the same as the exemption of American coastwise shipping from the payment of tolls. Repayment of the exact tolls collected would give the same assistance to American vessels as would be rendered by the exemption of American ships from the payment of tolls.

It does not come within the province of this report to interpret the scope and meaning of the Hay-Pauncefote treaty. Whatever the Hay-Pauncefote treaty may be held to mean, the policy of the United States as to the exemption of American ships from the payment of Panama tolls should not be decided with reference to the rights of the United States under the treaty.

Traffic
(doc.)

75th Congress, 1st Session | SENATE | Document No. 23

PANAMA CANAL TOLLS

Pages
39-54

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE REPORT OF THE SPECIAL COMMITTEE APPOINTED
BY THE PRESIDENT ON PANAMA CANAL TOLLS
AND VESSEL MEASUREMENT RULES

February 24 (calendar day, February 26), 1937.—Read; referred to the Committee on Interoceanic Canals and ordered to be printed with illustrations

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1937

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CHAPTER XII. PANAMA CANAL EXPENSES, REVENUES, AND RATES OF TOLL

In order to make "advisory recommendations" concerning the tolls that should be charged for the services rendered by the Panama Canal it is necessary to consider the capital and other expenses incurred in providing and operating the facilities by which the services are performed. That will indicate the gross and net revenues required to meet the expenses and to make the enterprise self-supporting. The rates of tolls to be recommended should be such as will yield a revenue which, together with the net revenue which the enterprise yields from sources other than Canal tolls, will produce an income sufficient to cover fixed charges and current operating and maintenance expenses and normal improvements.

The total expenses of the Panama Canal enterprise as a whole are of two general categories, those of the Canal and its auxiliaries other than the Panama Railroad Co., and those that the railroad company incurs in connection with the railroad and the other property owned and managed by the railroad company. The administration of the finances of these two parts of the Canal enterprise may be briefly described.

The administration and activities of the Panama Railroad Co. and the relation thereof to the Canal enterprise as a whole are described as follows in the 1936 Annual Report of the Governor of the Panama Canal (p. 66):

> In 1904, before actual construction work on the Panama Canal was started, the United States Government secured control of the capital stock of the Panama Railroad Co. which it now owns completely and has operated the company since that date through a board of directors appointed by the Secretary of War, who holds all the stock of the company except the qualifying shares of the directors. By Executive order of May 9, 1904, the President of the United States directed that the general policy of the railroad be controlled by the United States and that the road be made an adjunct to the Panama Canal, at the same time carrying on its operations as a common carrier. Since that time the corporation has established and operates various business activities upon the Isthmus incidental to the construction, operation, and maintenance of the Canal. Thus the United States Government is conducting the business activities relating to the Canal enterprise under two distinct organizations: First, the Panama Canal, which is a direct branch of the Government; and second, the Panama Railroad Co., which is a Government-owned corporation. As the activities of the railroad company are covered in detail in its annual report, only the major features of operation as they relate to the Canal administration are covered in this section.
>
> In addition to the operation of the railroad, the enterprises of the Panama Railroad Co. include commissaries, which are retail general stores catering primarily to Government employees, cargo-handling activities at the harbor terminals, hotels, coaling plants, a steamship line, telephone system, and certain real-estate operations in the Republic of Panama.
>
> The operations of the railroad proper, harbor terminals, coaling plants, stables, and baggage transfer were continued throughout the year under the direction of the general manager of the railroad; the telephone system under the electrical engineer; renting of lands and buildings under the land agent; and commissaries, Hotels Washington and Tivoli, and subsidiary activities under the chief quartermaster.

During the fiscal year ending June 30, 1936, the operations carried on by the Panama Railroad Co. yielded a profit of $1,077,987.07, after meeting operating costs, providing amply for depreciation and meeting all expenses other than interest on capital investment. The revenues of the company, being those of a corporation, come into its own treasury and the company has control of expenditures made for operating expenses, for allotment to funded depreciation or other reserves, for additions to surplus, and for the payment of dividends.

The Panama Canal enterprise, other than that part of it that is under the ownership and administration of the Panama Railroad Co. includes (1) property and activities connected with business operations, and (2) property and services pertaining to the transiting of vessels and to the administration of the auxiliary services incident to the ownership and operation of the Canal. It is necessary to keep in mind the distinction between the business properties and the other Canal properties. As the Governor of the Canal states in his 1936 annual report:

> Business operations of the Panama Canal are conducted separately from operating activities pertaining directly to the transiting of vessels, and government of the Canal Zone. The annual appropriation acts for the Panama Canal authorize the use of appropriated funds, for the conduct of auxiliary business activities, provided that funds so advanced are recovered through earnings, and with the further proviso that any net profit derived from such business activities be covered annually into the United States Treasury.
>
> In the accounting of profit and losses of the business activities there is no actual interest charge on the money invested in these plants and their equipment. This investment totaled $29,067,383.76 at the beginning of the fiscal year and $30,427,202.61 at the end.
>
> Based on the figure of $29,067,383.76 representing fixed property and equipment alone at the beginning of the year, the profits counted at $920,185.23 showed a return of 3.17 percent.

As was stated in the previous chapter, the Canal business properties include the Canal Zone's electric light and power system, the water system, the shops, the fuel-oil plants, the general storehouses, the gold quarters for American employees, the silver quarters for other employees, the rented buildings, and properties used in minor activities. From the income derived from these business properties a funded reserve for depreciation is maintained. Only the net profits of the operations are annually covered into the United States Treasury. As the Governor states the net profits for the fiscal year amounted to somewhat more than 3 percent upon the capital investment in the business properties.

The entire revenues of the Panama Canal, other than those from the business properties just referred to, are covered into the United States Treasury. These revenues consist mainly of receipts from tolls which in the fiscal year 1936 amounted to $23,506,806.46. In addition there were civil revenues of $119,915.21 consisting of miscellaneous receipts of $95,298.01 and of a postal surplus of receipts over expenses of $24,617.20. These receipts plus $920,185.23 of profits from the operation of the Canal business properties made the total revenues from Canal operations (not including the dividend received from the Panama Railroad Co.) in the fiscal year 1936 $24,546,906.90. (Tables 20 and 21, Panama Canal Annual Report for 1936.) To meet the expenses for the maintenance of the Canal, for sanitation and civil government in the Canal Zone, and for the annual payment of $250,000 to the Republic of Panama the Congressional appropriations for the fiscal year 1936 amounted to $9,047,597. The actual net Canal expenses for that year, including an unfunded expense item of $1,006,625.28 for depreciation on fixed property was $9,095,067.13. The Government's receipts for the year ending June 30, 1936, from the Canal enterprise, other than the Panama Railroad Co.'s property, exceeded the net Canal expenses by $15,451,839.77.

Such are the pertinent facts concerning the finances of the Panama Canal enterprise as now administered. The Committee is not suggesting that the present general plan of administering the Canal and railroad be changed. The present investigation and discussion are concerned with finding out what are the net revenues of the Canal enterprise as a whole, what capital and other expenses should be met from revenues, and with the rate of toll that with receipts from other sources will make the enterprise self-supporting in the future. Briefly restated, the present administration of the Canal enterprise as a whole provides: (1) for the ownership and management of the Panama Railroad and some other property of the Panama Canal enterprise by the Panama Railroad Co. which is an agency and adjunct of the Canal administration. The company's revenues cover current expenses, including maintenance and depreciation, and yield a net profit which is a part of and may be credited to the net revenues of the Canal enterprise as a whole; (2) for a financial management of the business properties of the Panama Canal enterprise, other than the railroad company's property, that permits expenses, including a funded reserve for depreciation, to be met from the earnings of the property, which earnings have been sufficient to yield a substantial net profit that may be credited to the net revenues of the Canal enteprise; (3) for covering into the United States Treasury the revenues obtained from Canal tolls and for minor miscellaneous services, the expenses for Canal operation and maintenance, including depreciation, and for the administration of the Canal and the Canal Zone being met from annual appropriations by Congress. The only change in financial administration that the Committee suggests be given consideration is the setting up of a funded depreciation reserve for the Canal property other than that included in business properties and in the property of the Panama Railroad Co.

The expenses that should in the future be met from the revenues of the Panama Canal enterprise as a whole may be summarized as follows:

1. Interest at 3 percent per annum upon the investment in the Canal enterprise as a whole. The present amount of that investment has been found to be $475,214,870.49 upon which an annual interest at 3 percent would amount to $14,256,446.11.

2. The net annual operating expenses of the Canal enterprise, other than the Panama Railroad and the other property of the Panama Railroad Co. In the fiscal year 1936, those expenses amounted to $8,088,441.85, not including $1,006,625.28 for depreciation on fixed property which was included in the accounts as an unfunded item of expenses. During the fiscal year 1936 there was no expense incurred for a lock overhaul. Such expense comes each 2 years, and one-half of such expense, or $325,000, should be included in the Canal's annual net operating expenses.

3. A depreciation reserve for Canal property other than that included in Canal business properties and that owned by the Panama

Railroad Co. As has been stated, the Canal authorities have for some years included in their account of yearly Canal expenses an unfunded reserve of slightly more than a million dollars. For the current fiscal year the amount will be $1,200,000. The Committee agrees with the opinion expressed by the Governor of the Canal that a larger sum, $1,500,000, should be allocated annually to this depreciation reserve. The Governor is doubtless correct in stating that there is now some accumulated depreciation. In the opinion of the Committee it would be well to make ample provision from earnings for property depreciation and the Committee would favor funding the reserve, instead of providing for normal depreciation by annual congressional appropriations.

4. A funded surplus to be set aside from earnings to provide for normal necessary property betterments and replacements. The surplus thus set aside annually during the next few years might well be $2,000,000. Such a sum would not be sufficient to meet the needs therefor adequately, and it might well be increased with the growth in Canal traffic and revenues, with a view to making the annual allotment $3,000,000 by the end of a decade. Unless this is done, it will be necessary to add to the capital investment year by year to provide funds for rebuilding the quarters occupied by Canal employees and for many numerous other improvements that will need to be made in keeping Canal facilities adequate and in good condition. Normal improvements other than those requiring extraordinary expenditures should be made from Canal earnings without additions to the interest-bearing capital investment.

Stated in tabular form the estimated annual expenses that should be met during the next few years from the earnings of the Panama Canal enterprise are—

Interest at 3 percent upon an investment of $475,214,870.49	$14, 256, 446. 11
Net Canal operating expenses, not including depreciation	8, 100, 000. 00
Lock overhaul	325, 000. 00
Depreciation reserve for Canal property, other than business properties and property of Panama Railroad Co.	1, 500, 000. 00
Surplus fund for normal replacements and betterments, starting with	2, 000, 000. 00
Total	26, 181, 446. 11

It will be noted that the foregoing estimate of expenses does not provide a fund for the amortization of the investment. It seems to the Committee that the time has not yet come, in the development of the Panama Canal enterprise, to provide for the amortization of the investment. For the present, it seems best to limit revenues to those required to meet current operating and maintenance expenses and to provide adequately for depreciation reserves and surplus funds for normal replacements and betterments. It is not impossible that the development of Canal traffic and the increase in the net revenues of the Canal enterprise as a whole during the next decade or two will make possible and will justify the adoption of a plan for the amortization, over a period of 50 to 75 years, of the investment which the people of the United States have made or will have made in providing a commercial facility used not only by shipping under the American flag but also, and more largely by the shipping of other countries.

In discussing and estimating the revenues of the Panama Canal enterprise, it may be assumed that the present general plan of financial administration will be continued, (1) that the Panama Railroad Co. will continue to own and operate the kinds of property it now possesses and will make adequate provision from earnings for maintenance and depreciation of its property; (2) that the "business properties" of the Canal enterprise other than those under the jurisdiction of the Panama Railroad Co. will be managed as at present, that expenses including provision for a funded depreciation reserve will be met from earnings, and that the profits resulting from the management will be covered into the United States Treasury; and (3) that the revenues from the operation of the Canal and from minor miscellaneous receipts coming from Canal auxiliaries will be covered into the United States Treasury, expenditures incurred in the operation and maintenance of the Canal and in administrative activities connected therewith being made from annual appropriations made by Congress.

The major share of the revenues of the Canal enterprise comes from the tolls levied upon the vessels that transit the Canal. The amount of revenue derived from tolls is obviously determined by the number of vessel-tons upon which charges are imposed and upon the rates of toll levied. The estimate here made of the future revenues of the Panama Canal assumes that the rates of toll will be levied upon tonnage determined by the vessel-measurement rules that are recommended in and made a part of this report. The rates of toll recommended will presently be stated, with reasons for the recommendations.

In chapter IX upon prospective tonnage of Panama Canal traffic, an estimate was made of the probable tonnage of traffic for the coming 25 years. That estimate states that if the vessel tonnage for the year ending June 30, 1936, had been determined by the amended Panama measurement rules recommended in this report, the tonnage would have been 25,614,000 tons. The estimated tonnage thus determined for the year ending June 30, 1937, is 26,963,000 tons. That total may be somewhat reduced by the seamen's strike at American ports that lasted from the end of October 1936 to the early part of February 1937, although it is probable that the effect of the strike upon the tonnage of the Canal will be at least partly offset by the large temporary increase in vessel transits following the release of shipping that was tied up during the strike. The estimated tonnage, under the proposed measurement rules, for the year ending December 31, 1938, is 27,420,000 tons. That tonnage would yield a revenue of approximately $24,100,000, if the tolls levied were 90 cents per net vessel-ton on laden commercial vessels, 72 cents per ton upon commercial vessels in ballast, and 50 cents per displacement-ton upon warships other than those of the United States. If we assume that such rates of toll are levied, the estimated revenues of the Panama Canal enterprise for the calendar year 1938 from tolls, from the profits of Canal business properties, from postal and other miscellaneous receipts, and from the profits of the Panama Railroad Co. would be as follows:

An estimate of Panama Canal revenues for the calendar year 1938

Tolls at 90 cents per net ton for laden commercial vessels, 72 cents per net ton for vessels in ballast, and 50 cents per displacement-ton for warships other than transports, colliers, supply ships, and hospital ships	$24,100,000
Profits of Canal business properties	1,000,000
Postal surplus and other miscellaneous receipts	125,000
Net income of the Panama Railroad Co's property	1,265,000
Total	26,490,000

The foregoing estimate is believed to be a conservative one. The Canal business properties had a profit of somewhat less than $1,000,000 for the fiscal year 1936, but the average for the past 4 years has been more than that amount and with the increase in Canal traffic and services the profits should tend to rise. For the fiscal year 1936 the postal surplus was $24,617 and the "other miscellaneous receipts" were $95,298, a total for the two of $119,915. The estimated net income of the Panama Railroad Co. is taken from a statement prepared by the former comptroller of the Panama Canal. The estimate indicates a probable income of the Canal enterprise for the calendar year 1938 of approximately $26,500,000 if the stated rates of toll are charged.

The estimate is made for the calendar year 1938, because that is the earliest period within which the recommendations made by the committee can be put into effect by legislation amending the Panama Canal Act of August 24, 1912, and by Executive action in accordance therewith. The act of 1912 provides that the President shall give not less than 6 months' notice of a change in the rates of toll, and presumably that provision of the law would not be changed by amendatory legislation. If the proposed changes in vessel measurement rules should become effective June 30, 1938, and the rates of toll were those stated in the above estimate, the revenues for the ensuing fiscal year would be nearly $27,000,000. The foregoing estimate of the probable revenues of the Panama Canal enterprise for the calendar year 1938 somewhat exceeds the expenses to be met from the revenues.

RATES OF TOLL RECOMMENDED

Under the Panama Canal Act of August 24, 1912, the President was "authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal", 6 months' notice to be given of a change in the tolls. The statute further provided that the rates of tolls prescribed "may be based upon gross or net registered tonnage, displacement tonnage, or otherwise and may be based on one form of tonnage for warships and another for ships of commerce." By Presidential proclamations issued before the opening of the Canal the tolls payable by laden commercial vessels were fixed at $1.20 per net ton, per ton of earning capacity. The toll payable by commercial vessels in ballast was $0.72 per net ton, the tonnage to be determined by the Panama Canal vessel measurement rules prescribed by the President. Warships (other than transports, colliers, supply, and hospital ships which were to pay tolls upon their net tonnage) were to pay a toll of 50 cents per ton of actual displacement. The rates of toll and the tonnage rules thus prescribed have not been changed; but, as has been fully explained, the interpretation that was given the provision in the 1912 statute as to the maximum tolls that might be levied on freight and passenger vessels has resulted in causing most vessels to pay a rate of tolls different from that prescribed by the President and upon a tonnage determined by rules not prescribed by the President.

It is recommended that the statutory provision concerning the maximum and minimum limits within which Panama Canal tolls may be fixed by the President be amended as follows:

The amendment should definitely provide that the tolls for the use of the Panama Canal shall be based upon vessel tonnage determined by rules prescribed by the President. Unless this is done, the President will not have been given authority "to prescribe * * * the tolls that shall be levied * * * for the use of the Panama Canal."

The amending statute should also stipulate that the tolls upon commercial vessels and Army and Navy transports, colliers, supply, and hospital ships shall not exceed $1 per Panama Canal net ton and shall not be less than 75 cents per Panama Canal net ton, when such vessels are laden.

The statute should authorize the President to prescribe for vessels in ballast without passengers or cargo a rate of tolls lower than is levied on vessels carrying passengers or cargo. The statute of 1912 is so phrased that the minimum rate of toll that may be levied applies to vessels in ballast as well as to those that are laden. This should be changed.

The prospective traffic of the Panama Canal indicates that ample revenues can be obtained if the tolls upon laden ships of commerce are kept within a maximum of $1 per net ton, the tonnage being determined by the vessel measurement rules embodied in this report. A minimum permissible rate of toll upon laden commercial vessels that is 25 percent less than the allowable maximum will give the President discretionary authority sufficient to enable him to make such adjustment in the rates of tolls from time to time as changing conditions may make desirable.

The committee recommends that at the earliest practicable date the following rates of toll be prescribed by the President for the use of the Panama Canal:

1. For commercial vessels with passengers or cargo, and for Army and Navy transports, colliers, supply, and hospital ships, 90 cents per net ton, the tonnage to be determined by Panama Canal Measurement Rules prescribed by the President.
2. For vessels in ballast, without passengers or cargo, 72 cents per net ton, the tonnage to be determined by Panama Canal Measurement Rules.
3. For warships, other than transports, colliers, supply, and hospital ships, 50 cents per ton of displacement at the time of transiting the Canal.

The above estimate of the Canal revenues that will be obtained during the calendar year 1938, if the Panama Canal Vessel Measurement Rules amended as herein recommended are in effect and if the proposed rates of toll are levied, shows that the revenues will be equal to the expenses to be met from the income of the Canal. It may be assumed that the normal expenses incurred in keeping the Canal enterprise upon a self-supporting basis will tend to increase as the "plant" becomes older and as the traffic served becomes larger and the other Canal activities increase. It is also manifest that some relatively important plant or property renewals should be made in the near future. The prospective increase in Canal traffic and revenues will apparently provide the revenues needed to meet normal expenses. The estimate of the future traffic of the Canal, contained in chapter IX of this report, makes the probable tonnage of Canal traffic, for the fiscal year 1948, 33,292,000 tons, as determined by the proposed measurement rules. The estimated increase in the tonnage of traffic during the 9½ years from the calendar year 1938 to the fiscal year 1948—5,872,000 net vessel tons—will, if the proposed rates of toll are levied, add somewhat more than $5,000,000 yearly to receipts from tolls and add a corresponding amount to total annual Canal revenues. The proposed rates of toll applied to Canal tonnage determined by the amended Panama Measurement Rules will apparently assure ample Canal revenues. Indeed, the increase in traffic and revenues during the coming decade may justify a lowering of the rates of toll within 10 years.

The general effect of applying the proposed vessel measurement rules to determine the tonnage upon which tolls shall be levied will be to cause all vessels using the Panama Canal to pay charges upon a common, equitable basis. The proposed rates of toll levied upon tonnage determined by the recommended measurement rules will not increase the average toll charges now being paid by vessels using the Canal. The present discriminations and inequities in the tolls, as among different types of vessels, will be minimized; but the aggregate toll levies will be changed but slightly. A calculation made by the chairman of the board of admeasurement of the Panama Canal shows what would have been the result had the proposed measurement rules and rates of toll been in effect during the year ended June 30, 1936. Of the total tolls collected, the percentage paid by American passenger vessels would have been increased by only 0.62 percent; the increase in the percentage received from foreign passenger ships would have been 0.77 percent; while the share borne by foreign general cargo vessels would have been 0.35 percent larger. For each of the other types of vessels, there would have been some decrease in the percentage it paid of the total tolls collected. For United States vessels as a whole there would have been a decrease of 0.41 percent, and for foreign vessels an increase of 0.41 percent in the distribution of the aggregate tolls paid.

The committee has been pleased to find that the Panama Canal enterprise can be maintained on a self-supporting basis without a general increase in the low toll charges now paid by shipping for the use of the Canal. The proposed amendments to the present Panama Canal vessel measurement rules will effect a reduction of 8.6 percent in tonnage as determined by the present Panama rules. The recommended toll for laden commercial vessels of 90 cents per net ton upon tonnage determined by the proposed measurement rules means a two-fold reduction of the toll charges that were fixed by the President for the use of the Canal. The average Panama Canal tonnage of vessels, when measured by applying the proposed rules, will be reduced 8.6 percent, and the rate of toll that was originally prescribed by the President will be lowered 25 percent. The two-fold reduction amounting to about prescribed when the Canal began operation, brings the proposed charges practically to the average tolls now paid by shipping for the use of the Canal.

The present rate of Panama Canal tolls for vessels in ballast is 72 cents per net ton, the tonnage being determined by the present Panama measurement rules. The adoption of the proposed amendments to these measurement rules will somewhat reduce the net tonnage and thus the tolls paid by most vessels transiting in ballast. The amendments proposed in the tonnage measurement rules will affect different kinds of vessels to a varying extent, the vessels in ballast securing least reduction in the tonnage upon which the ballast toll rate is levied being oil tankers. The proposed toll rate of 72 cents per net ton for vessels in ballast is 20 percent less than the rate recommended for laden vessels. At present vessels in ballast are given a reduction of 40 percent in the rate of toll charged. A spread of more than 20 percent in rates for vessels in ballast and for laden vessels does not seem justified. The rate of 72 cents is a low charge for the service rendered, and is lower than the ballast rate at the Suez Canal will be even after April 1 when its ballast rate will be 3 shillings per net ton upon tonnage determined by the Suez measurement rules—a tonnage appreciably larger than that resulting from the measurement of vessels by the proposed Panama rules. A large share of the vessels transiting the Canal in ballast consists of oil tankers whose present toll charges will be substantially lowered if the rate of 90 cents per net ton is prescribed for laden vessels. The same will be true of the relatively small number of bulk ore carriers using the Panama Canal. The computation, above referred to, showing the distribution of the aggregate toll receipts for the fiscal year 1936 among the main categories of shipping, shows that, if the proposed measurement rules and rates of toll had been in effect in the fiscal year 1936, there would have been a decrease in the share of the aggregate tolls borne both by oil tankers and ore vessels. A toll rate for ballast vessels of 72 cents per net ton, revised Panama measurement rules, will not be an unreasonable charge.

The committee recommends that no change be made in the present Panama Canal toll rate of 50 cents per ton of actual displacement payable for warships other than Army and Navy transports, colliers, supply and hospital ships. The charge is a reasonable one, and it is paid upon a proportionately small number of vessels. The present reduction in the charges made for the use of the Panama Canal may best be limited to the charges levied upon vessels of commerce.

It has been suggested that the Panama Canal revenues should be credited with the amount that would be received if tolls were levied upon United States Army and Navy vessels transiting the Canal. The necessity or advisability of adopting the suggestion is not evident. As has been shown, the low rates of toll recommended in this report will yield revenues sufficient to make the Canal enterprise self-supporting, without crediting the levies with tolls upon United States Government vessels. The service that the Canal renders to the United States Army and Navy vessels by allowing them to transit the Canal without charge may justly be regarded as but a partial compensation for the valuable service rendered by the Army and Navy in protecting the Canal and maintaining its neutral use by the vessels of commerce and war of all nations. Obviously the United States Government as the owner of the Canal would be paying itself for the services it had performed in passing its own vessels through its Canal. For practical reasons, it seems best to continue the present practice of not charging Canal tolls upon United States Government vessels. If the Army and Navy Departments were obliged to include in their budgets, and to secure appropriations for, funds to pay tolls upon transiting Army and Navy vessels, such vessels would probably make much less use of the Canal. The tendency would be to limit the transits as much as possible, which would be unfortunate from the standpoint of the maintenance of the efficiency and morale of the defense forces.

It is assumed that Congress will continue to vest in the President the authority to prescribe, and from time to time to change, the rates of toll charged for the use of the Panama Canal. The committee recommends the rates of toll that, in its judgment, should be levied during the next few years. From time to time the rates of tolls should be given careful consideration, to determine what changes in the rates have been made desirable by the growth of or changes in Canal traffic, by the relation of Canal revenues and expenses, or by changes in the factors affecting the intercoastal commerce of the United States or the currents of international trade. Economic and commercial conditions are not static. The Panama Canal is a facility for the service of interoceanic commerce. The charges for the service should receive such adjustments from time to time as will keep the charges in harmony with the needs of the Canal and the requirements that must be met in making the Canal the servant and assistant of international intercourse.

[From the Federal Register, Aug. 28, 1937.]

PANAMA CANAL TOLL RATES

A PROCLAMATION

Whereas section 411 of title 2 of the Canal Zone Code, approved June 19, 1934, authorizes the President to prescribe and from time to time change the tolls that shall be levied by the government of the United States for the use of the Panama Canal, and provides that no tolls when so prescribed shall be changed unless six months' notice thereof is given by the President by proclamation; and

Whereas section 412 of title 2 of the said Code requires the President to determine the tonnage of vessels on which toll charges for the use of the Panama Canal shall be based, and fixes maximum and minimum rates of tolls; and

Whereas the act entitled "An Act to provide for the measurement of vessels using the Panama Canal, and for other purposes", approved August 24, 1937, which amends the said section 412 and which by its terms becomes effective March 1, 1938, provides, in part, that the tonnage on which tolls shall be based shall be determined in accordance with the Rules for the Measurement of Vessels for the Panama Canal prescribed by the President, and fixes maximum and minimum rates of toll:

Now, Therefore, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me by the aforesaid section 411 of title 2 of the Canal Zone Code, approved June 19, 1934, do hereby prescribe and proclaim the following rates of toll to be paid by vessels using the Panama Canal:

1. On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers and cargo, ninety (90) cents per net-vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with the Rules for the Measurement of Vessels for the Panama Canal.
2. On vessels in ballast without passengers or cargo, seventy-two (72) cents per net-vessel ton.
3. On other floating craft, including warships, other than transports, colliers, hospital ships, and supply ships, fifty (50) cents per ton of displacement.

The tolls prescribed by this Proclamation shall become effective on March 1, 1938, and on that date shall supersede the tolls prescribed by Proclamation No. 1225 of November 13, 1912.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 25th day of August, in the year of our Lord nineteen hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

[SEAL]

By the President,

FRANKLIN D. ROOSEVELT.

CORDELL HULL
Secretary of State.

[No. 22471]

[F.R. Doc 37-2644; Filed, August 27, 1937; 10:37 a.m.]

[The subcommittee adjourned at 4:56 p.m.]

CANAL OPERATION UNDER 1977 TREATY

WEDNESDAY, FEBRUARY 28, 1979

House of Representatives,
Panama Canal Subcommittee of the
Merchant Marine and Fisheries Committee,
Washington, D. C.

The subcommittee met at 10:44 a.m., in room 1334, Longworth House Office Building, Hon. John M. Murphy (chairman) presiding.

Present: Representatives Murphy, Hubbard, Bonior, Bauman, Dornan, and Carney.

Staff present: Carl Perian, chief of staff; Terrence Modglin, majority counsel; Nich Nonnenmacher, minority counsel; Ken Merin, minority counsel; W. Merrill Whitman, special consultant to the committee.

The Chairman. The subcommittee will come to order.

Our first witness for this sixth day of hearings on treaty implementing legislation is Dr. David Challinor, Assistant Secretary of Science for the Smithsonian Institution.

Dr. Challinor last testified before this subcommittee on the issue of sea-level canal studies. His will be the first testimony in these hearings directly focusing on environmental issues in the implementing legislation.

In connection with the issue of the canal and the environment, I would like to now ask unanimous consent to place into the record of these hearings the working paper that is done for the committee and subcommittee by the Office of Technology Assessment. The paper concerns environmental questions related to the implementation of the new treaty arrangement,

Without objection, that will be placed in the record at this point.

[The following was placed in the record:]

ENVIRONMENTAL ISSUES AFFECTING
THE PANAMA CANAL

A Working Paper Prepared by The Office of Technology Assessment's Oceans Program for The House Committee on Merchant Marine And Fisheries, Subcommittee on Panama Canal

December 15, 1978

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I. Introduction

In a letter dated February 3, 1978, Congressman John M. Murphy, Chairman of the Committee on Merchant Marine and Fisheries, and Congressman Ralph H. Metcalfe, chairman of the Subcommittee on Panama Canal, asked for "an analysis of the prospects for environmental protection and conservation, and an exploration of policy options to deal with prospective environmental problems under the proposed (Panama Canal) treaties."

OTA Director Russell W. Peterson responded that "OTA does not have adequate staff or resources to prepare such a comprehensive study." He offered OTA expertise for a more limited project. This offer was accepted by Chairmen Murphy and Metcalfe in a letter dated July 17. The letter set forth three objectives:

- To make a full analysis of the Environmental Impact Statement (EIS).
- To provide an analysis of the key factors for protecting the environment of the Canal.
- To furnish potential issues for treatment by the Joint Commission on the Environment (which is created by the Panama Canal Treaty) and a set of guidelines for implementation and operation of that Commission.

The OTA staff began studying the Canal's environment and holding informal meetings with the staff of the Merchant Marine and Fisheries Committee. Later, briefing sesions were held with four biologists, two environmentalists and a representative of the Panama Canal Company.

Summaries of the briefings are attached as Appendix E.

These efforts were aimed at forming, convening and reporting of an Ad Hoc Panel of experts whose opinions on the Canal would form a foundation for this study paper. The names and addresses of the panelists, presenters to the panels and some additional experts consulted by OTA, are given in Appendix A. Specific expertise represented on the panel included hydrology, economics, biology, forestry, health and sanitation, Canal operation, and conduct of an international commission.

On August 10, 1978, representatives of the State Department, the Agency for International Development (AID), the Panama Canal Company, and a representative of the Government of Panama made presentations to the panel. The presentations are attached as Appendix B, except for Panama's report. Copies of that 143-page document entitled "National Development and Recovery of the Panama Canal Zone," are on file in the library of OTA's Oceans Program. Copies have also been sent to the Merchant Marine and Fisheries Committee.

A list of U.S. Environmental laws applicable to the Canal Zone was presented to the panel and is included here in Appendix C.

The group met the next day, August 11, for further discussions. Verbatim transcripts of the two-day meeting were made and forwarded to the Committee. Additional copies are available in OTA's Oceans Program library.

At the close of the meeting panelists were asked to write letters to OTA, commenting on any aspects of the environment of the Panama Canal. In particular, the panelists were asked for ideas in their own area of expertise. These letters are reproduced in Appendix D.

A sub-panel meeting with OTA and John Hendrickson of the International Joint Commission (USA/Canada), Paul Campanella of JRB Associates, and Michael Wright, Nature Conservancy, was held on October 25, 1978, to discuss the concept of the proposed Joint Commission on the Environment, and, where possible, offer some guidelines for its formation. The outcome of these discussions, along with ideas from the Ad Hoc Panel meeting and the subsequent letters from panelists are abstracted in section II. C.

II. A Critique of the State Department's "Final Environmental Impact Statement for the New Panama Canal Treaties, December 1977"

This critique of the EIS was prepared within the following constraints:

- Only environmental aspects of the EIS were considered (this critique omits consideration of parts of the EIS dealing with employment, tolls and shedding of services).
- It was also agreed in advance that matters pertaining to a new sea-level canal or third lock would not be included in OTA's critique.

Criticisms from government officials, special interest group representatives and private citizens covered a broad range of subjects. For example, many environmentalists wished that the EIS had been done years ago so that greater detail in the treaty could have been included to provide for positive protection of the Canal environment.

But others thought the State Department's EIS was a generally solid job. Michael Wright (The Nature Conservancy) when asked by OTA, said he thought the EIS focused on the right issues. The result was not the ideal document he said, but a satisfactory one. Nicholas Robinson (Sierra Club) in a written critique, detailed some shortcomings of the EIS. But he also wrote that he believed this was the State Department's best effort, to date, to protect the environment.

The description of the environment of the Canal area was fairly accurate, according to "comments" accompanying the EIS, except that the map showing forest areas was misleading. About 90% of the area of the Canal Zone is in forest, not the smaller area depicted on the map. The EIS should include maps of all of Panama showing where the forests were 25 years ago, 6 years ago and today, many people said, in order to point up the great amount of deforestation that has occurred. The EIS, according to some, does not hit hard enough on the dangers to the forests within the Zone and in the larger watershed area which supplies the Zone's water.

Various residents of Panama, as well as Thomas Kimball (The National Wildlife Federation) thought the EIS was deficient in detailing the role of the squatters and their slash-and-burn technique of agriculture. These squatters are, by most accounts, the major contributors to the on-going deforestation. Steve West, writing as an individual who had lived over two years in the Canal Zone, said of the EIS approach to the problem, "....this proposal shows a total lack of concern with the environment. I am only glad that I do not have to live with the conscience of the persons who prepared this draft EIS."

A few comments were also made on inadequate analyses of potential water pollution problems. Richard Hunt, then acting governor of the Canal Zone, noted that the treaty permits military auxiliaries (including oilers) to pass unexamined through the Canal. Some of these ships may well be very old and unsafe. The EIS does not study this danger. Mr. Hunt further pointed out that Panama has no laws paralleing the U.S. Water Pollution Control Act or the Marine Protection Research and Sanctuaries Act. The EIS does not examine the impacts of this state of affairs. Robert Ringhausen (Defense Logistics Agency) and Larry E. Meierotto (Interior Department) were unhappy that the EIS is silent on what Panama might do in way of prevention and countermeasures of oil pollution. Mr. Meierotto further wondered why the EIS discusses surface water, but ignores the significance of ground water.

Richard Robins (University of Miami), Meredith Jones (Smithsonian) and Howard Sanders (Woods Hole Oceanographic Institution) all expressed (telephone conversations with an OTA staff member) different concerns about the possibility of pumping salt water into Gatun Lake during periods of water shortage. The EIS does not analyze the possible consequences of this action.

A number of people criticized the EIS for inadequate or inaccurate treatment of the potential dangers to wildlife. Specific dangers to "threatened and endangered species" were not delineated, they said. For example, critics noted that the preserves are too small in area for some animal species to maintain a stable population. However, Eugene J. Morton (Smithsonian) stated that the EIS treatment of the subject of habitat destruction was adequate.

David Challinor (Smithsonian) and Mr. Wright (Nature Conservancy) thought the EIS should have pointed out that existing hunting restrictions in the Canal Zone and Panama have had almost no effect. Mr. Challinor noted that the EIS "TAB D" on migratory game birds applied only to one particular area and is not up-to-date or applicable to all the Canal Zone. Mr. Baicich wanted the EIS to examine various means of safeguarding the endangered species.

Dr. Jaime Pujals (Panama Audobon Society) said that the EIS should explain that the Panamanian forests provide excellent habitats for many birds and large animals, and note the danger to this wildlife as the forests decrease in size. He noted (the EIS does not) that tropical birds are particularly sensitive to disturbances in their habitats.

Sanitation and public health portions of the EIS received mixed reviews. Howard Osborn (US Department of Agriculture) thought that containment of animal diseases was satisfactorily covered in the EIS, while Charles Custard (HEW) thought the EIS did not analyze the implications of the Canal Zone as a north/south barrier to hoof-and-mouth disease. He deplored the lack of any details on health and sanitation implications of the treaty implementation. This was echoed by Dr. Jack Millar of the Gorgas Memorial Institute. The EIS should have considered a possible "health zone", he said, and it failed to predict the new load that would be imposed on the Panamanian Health Department, or its ability to handle that load. Patricia Rosenfield (Resources for the Future) informed us that an HEW report in 1972 provides general health status and specific health problems in Panama. A summary of the findings are in a separate letter report which is included in Appendix D. Various Panamanian residents feared that public health matters may be relatively neglected in the future.

Carlos Stern (US Air Force) noted that potential future activities by the U.S. military in Panama will almost certainly have some environmental impacts. For example, an antenna site will be re-located. This may require clearing of 350 acres of forest. Mr. Campanella (JRB Associates) had also expressed concern with how U.S. military actions would, if at all, be modified by environmental concerns. The EIS does not analyze this problem.

Panama has many options for handling the questions of de- and reforestation. No clear cut commitment by the government of Panama has been made at this time. The EIS does not analyze the consequences of a reasonable range of options. The EIS should also point out that careful planning and use of the forests will yield great economic value to the country; for example, timbering industry, enhanced tourism and improved quantity and quality of fresh water.

A number of comments were made to the effect that the EIS omits any reference to Panama's environmental record, which is uneven by U.S. standards. In general, Panamanian laws and regulations are good, but enforcement of environmental protection has been less than perfect. Mr. Wright, though, believes that Panama has developed a political sensitivity to this problem and apparently has serious plans to protect the environment in the future.

Others wondered why the EIS did not inquire into Panama's specific intentions for the area. Nicholas Robinson wanted to have seen a strong commitment to the environment by Panama. Richard Hunt thought the most serious deficiency of the EIS was in ignoring an imminent major change in socio-economic patterns. He believes this will happen when the Panamanian government assumes responsibility for police, justice, fire protection, maintenance, lighting, garbage collection, etc.

At present, there are less than ten trained forestry experts in all Panama. Panama's intentions and performance in these new regulatory areas will have important effects on the environment.

The EIS does not, according to Leonard Meeker and Don G. Scroggin (Center for Law and Social Policy) spell out goals for management of the environment, and it presents no past history of environmental management. Mr. Kimball said he wished the EIS outlined the socio-economic pressures in Panama that affect such things as deforestation, water supply and sanitation.

The main solutions to environmental problems offered by the EIS are the creation of the Joint Commission on the Environment (JCE) itself and one other project funded mainly by a loan from the Agency for International Development (AID).

Mr. Wright saw insufficient assurance that this AID project (described in detail later) would be approved. Even if approved, the project is somewhat narrow and is planned for a five-year period. Environmental protection in Panama will be long-term concern, and it needs continuity. Mr. Challinor and Mr. Wright added that the proposed AID project should also include protection of the existing forests. The trees should have a diversity of species not monocultures, he said.

Messrs. Meeker and Scroggin echoed the need for assistance over and above the AID project. The critical part of the effort is to build up the Panamanian institutions. Chaplin Barnes (National Audobon Society) emphasized that the environmental protection will depend on the will of Panama and the funding and development of its institutions.

Various comments were also made to the effect that the responsibilities and authority of the JCE need to be delineated.

Some other specific criticisms of the EIS are worth noting:

- Mr. Meierotto felt that the EIS should examine the potential consequences of a closed Panama Canal.
- Martin Convisser (DOT) pointed out that a possible new highway or bridge over the Canal might affect the zone environment.
- Several people were sharply critical of the eleventh hour issuance of the EIS and the brief period left for comments.
- Mr. Wright thought the EIS should carefully and explicitly state that when the Panamanian forests are gone and their wildlife gone, the result will be an "irreplaceable loss to mankind."

II. B. Key Factors for Protecting the Environment of the Canal

The population in the Canal watershed has increased at a rate of 5.37% a year. Unemployment in this area is estimated at about 30%. Forest areas and water have been used -- sometimes over used -- for farming, home-building, ranching, and lumbering. The Panamanian government is now planning for intensive agriculture and industrial development. Mr. Campanella estimates that at current growth rates, non-industrial pollution impacts will double in twelve years. Industrial growth plans, if even partially achieved, will cause difficult new pollution problems for Panama.

When the treaty comes into force after October 1, 1979, almost all the area affecting the environment of the Panama Canal will be under Panamanian jurisdiction.

Various key factors: the forests, water supply, wildlife, health and sanitation, water pollution, and dredging are discussed below.

1. Forests

Panama's tropical rain forests play a major role in the watershed ecosystem. Forests provide homes for animals and birds, collect carbon dioxide and emit oxygen. The forests hold water in the wet season and slowly release it in the dry season. The trees tend to stabilize the soil and thus reduce siltation (soil erosion) from heavy rains. Elimination of trees can be the first step in the creation of a desert. One expert has estimated that about one-quarter of the forest in the Canal Zone watershed was destroyed between 1952 and 1972. By 1976, more than 40% of the forests of 1952 had disappeared. If this rate continues there would be no forests there by the year 2000. A few recent (1978) photographs revealed continuing substantial deforestation in parts of the Canal Zone. (See illustrations)

Although environmentalists generally agree that the quantity and quality of forests play an important role in the hydrologic cycle, no reliable body of data exists on the quantitative effects of deforestation on weather, soil erosion, water storage and the water table.

The prime cause of this reduction in forests is slash-and-burn agriculture, which has a long history throughout Latin America.

Squatters are, for the most part, poor families that move into forested public lands to practice subsistence farming. They clear a patch of forest, farm it for one or two years until the nutrients are depleted, and then move on.

Listed below is the farming cycle timetable that has developed locally:

Month	Activity	
January-February	Cutting	
April	Burning	(Height of the dry season just before the first crop of heavy rains.)
	1st Crop	
May	Seeding	(Rice & corn after the 1st heavy rain.)
September	Harvesting	(First Cleaning)
September/October	Seeding	(Mostly corn - just after 1st harvest.)
	2nd Crop	
January	Harvesting	

This process is also carried out on very hilly land where the combination of no trees, low water-retaining grass, steep slopes and cattle-grazing leads to rapid soil erosion in heavy rains.

The government of Panama is currently trying to locate squatters and assess the extent of the problem. it presents officials with complex socio-economic issues. These are subsistance farmers -- a substitute livelihood must be provided if slash and burn practices are to be stopped. One plan suggested by the government of Panama would relocate squatters to more suitable farmlands outside the watershed.

A project, supported by AID and in the final proposal stages, has the goal of renewing the Panamanian forests. Funds for this work are appropriated in the fiscal year 1979 AID budget.

Here is an outline (provided by Moncrieff Spear, U.S. Department of State) of the proposed project, which still requires final approval by the U.S. and Panamanian governments:

"A. AID Project Purposes

"1. To strengthen the technical, managerial, and administrative capabilities of governmental institutions responsible for the management of renewable natural resources;

"2. To increase awareness of the importance of natural resource conservation; and

"3. To establish watershed management programs in the Canal and two other priority watersheds that incorporate to the extent possible the watershed's populations into the resource management/conservation process.

"B. Priority Areas

"Three watersheds have been chosen for project activities. These are the Canal, La Villa River and Caldera River Watersheds. Project activities will start first in the Canal area and it will receive the bulk of project resources.

"C. Project Activities - General

"Institutional - to develop sufficient capacity to design and administer watershed management programs, the Directorate for Renewable Natural Resources (RENARE) of the Agriculture Ministry will be reorganized on a program-oriented basis and its professional staff will be expanded. Substantial technical assistance and training will be provided, as well as additional physical facilities and equipment.

"Educational - a key element in the successful implementation of watershed management activities is the effective communication of the importance of rational resource use. RENARE will develop a dual purpose educational program aimed at the target populations within the watersheds where programs are being implemented as well as the general Panamanian population.

"D. Canal Watershed Program

The principal objective of a land use management program in the canal watershed is to reduce the elevated rate of sediment yield which enters Lakes Alajuela and Gatun. The current high rate of erosion, which is primarily caused by inappropriate land use, particularly cattle grazing in steeply sloped pastures, jeopardizes the longterm operational viability of the Panama Canal and affects the quality and quantity of water available for use in Panama City and Colon.

"A preliminary land use management plan has been developed in which the most appropriate land uses have been identified according to an analysis of physical factors (slope, soil depth, micro-climate, etc.), current land use, and the existence of special factors such as urban areas, roads, and mineral deposits.

"Forests Reserves - within the canal watershed, two areas in which land use activities are to be severely limited are already legally created as a forest reserve and a national park. These are the Chagres forest reserve and the Altos De Campana National Park. A third area known as Pipeline Road will be established as a national park when jurisdiction of the area reverts to Panama upon implementation of the Panama Canal Treaties. These three areas include more than 90,000 hectares, or more than 1/3 of the land area of the Canal watershed. Under the project, management plans for these areas will be developed and implemented by RENARE with external technical assistance. In addition, a forest trained guard/resource inspector corps will be formed.

"Reforestation - the land use management planning process has demonstrated that permanent vegetative cover would be a more appropriate land use for much of the Canal watershed that has been deforested and is now in pastures or used for traditional slash and burn agriculture. The reforestation activities proposed for inclusion in the project are therefore an important component of the strategy to rationalize land use in the watershed. They will provide an alternative economic activity over both the short and long term of a large segment of the Canal watershed's rural population while helping to reduce the current trend and will reduce the rate of establishment of pastures on steeply sloped hillsides. Also, the expanded forest cover will reduce sediment yield rates.

"A total of 10,500 hectares will be reforested under the project. Generally, reforestation will be done with native tree species which have commercial value in the Panamanian market. Three different types of reforestation activities will be implemented. These are forest plantations, agro-forestry (Taungya) and mixed forest with permanent crops. Each type of reforestation has a specific role within the proposed watershed management strategy.

"Soil Conservation - the soil conservation program will involve a number of erosion control measures. These measures will consist of a variety of small location-specific activities designed to control or prevent gully erosion, particularly along roadways, in pastures, and in urbanized areas.

"Poorly designed, unprotected roadways, cattle trails in pastures, particularly along natural roadways, and earthmoving associated with urbanization contribute heavily to sediment yields. In the canal watershed there are five areas where the incidence of gullying is high.

"Specific locations for soil conservation activities will be identified from aerial photos and verified by subsequent site visits. Sub-project activities will concentrate on correcting or preventing major point sources of sediment. Up to 8,000 hectares will be treated. This activity, however, will directly benefit a substantially larger number of hectares.

"Pasture improvement - Pasture improvement must address the problem of sedimentation due to cattle grazing on faragua grass. The land use planning process has led to the conclusion that grazing must be prohibited on hillside slopes greater than 45 per cent where it is almost impossible to control erosion if cattle are maintained on them. On slopes less than 45 per cent, faragua grass should be replaced by stoloniferous grasses. A pasture improvement program would be undertaken primarily in the Cerro Cama and El Cacao administrative area where there are 34,000 hectares with less than 45 per cent slope in faragua grass of which 15,000 hectares have less than a 20 per cent slope.

"The exact method of implementation of a pasture improvement program is still the subject of joint government of Panama-Aid Mission efforts to arrive at an effective design. Current planning includes a demonstration activity in which RENARE personnel would establish 1/2 to 1 hectare trial plots on approximately 600 ranches. These demonstration plots would demonstrate to the individual rancher the potential advantages of improved pastures. They would also provide nursery material for those ranchers wishing to convert additional hectares in improved grasses.

"Funding and Timing AID would provide the Panamanian government with a loan of $10.8 million over a five-year period for this project. The government of Panama would provide $7 million. Of this total of $17.8 million, $11.85 million would be spent on the canal watershed.

"The tentative projected schedule for this project is as follows: submission of the project paper to Washington for approval in December 1978; negotiation and conclusion of the loan agreement by the first quarter of 1979; initiation of some activities in the canal watershed in March 1979; and initiation and organization of all sub-projects in the canal watershed by the end of 1979. Land-use planning for the Caldera River watershed would start in January 1980." (End AID project description)

2. Water Supply

The Gatun watershed, more than 800,000 acres in size, feeds the Panama Canal. This watershed area includes Gatun Lake, Lake Alajuela (Madden Lake), and considerable surrounding acreage. Present daily water consumption in each of the cities of Panama and Colon is about equal to that needed for one ship to transit through the Canal -- or about 52 million gallons.

Lake Alajuela appears to be holding its size, although water storage here may well become a problem in the next century.

It might be noted that a hydro-electric power plan is operated by water rushing from this lake to the Canal; the amount of power generated is about equal to 25% of the power needs of the present Canal Zone.

The Panamanian government has expressed its concern for water quality as well as quantity. A Canal Zone water quality study was initiated in 1972. This study, finished in 1975, reports a high general level of water quality in the Canal. The report provides the datum from which improvement/deterioration can be measured in the future. (No detailed data exist outside the Canal Zone.)

Possible future water shortages may result in reduced Canal operations and reduced tolls. This provides one important incentive to stop deforestation activities, and to begin reforestation. (This was not a unanimous panel opinion. Leo Beard (Center for Research in Water Resources) in a letter appearing in Appendix D, believes deforestation will not necessarily decrease the Canal's water supply.)

In the past, draft limitations due to water shortages have occasionally been imposed on ships transiting the Canal. Historically, the most severe limitation occurred in May, 1977 when the maximum permissible draft was 35.6 feet. (With no water shortage, the maximum transit draft is 39.6 feet.)

Tom Constant (Panama Canal Company) says that the Canal operators usually have 30-60 days advance notice of draft limitations. This information is quickly transmitted to shippers so that the loading of the ships can be reduced. Mr. Constant said he believed that virtually no tolls were lost because of the reduced allowable drafts. He had no information, however, on ships that couldn't adequately reduce draft and thus had to by-pass the Canal.

Mr. Constant provided computer print-outs showing ship traffic, month-by-month during 1976 and 1977. The month of November 1977 was selected arbitrarily by OTA and analyzed; results are given in the following table:

Ships' Drafts	Tolls Paid in Nov. 1977 ($)
Greater than 36 feet	$2,815,300
Greater than 34 feet	3,683,900
Greater than 32 feet	4,886,700
Greater than 30 feet	5,817,000

In 1977, the total revenue from transit operations of the Panama Canal was $194,948,000. The total tolls for November ($14,379,000) were only a bit under the monthly average of over $16 million.

If the data in the above table are appropriate for year-in/year-out Canal operations, and if it is assumed that ships cannot reduce their drafts, the following pessimistic conclusions may be reached:

- There will be a 20 percent loss of tolls if water shortages in the Canal lead to a ban on ships with drafts greater than 36 feet.
- 34 foot limits would mean a 26 percent loss.
- 32 foot limits would reduce tolls by 34 percent.
- 30 foot limits would cut revenues by 40 percent.

3. Wildlife

The EIS presents a sketch of Panama's rich wildlife including about 17 endangered species which live in the Panama Canal area.

Biological research has been extensive. Barro Colorado, is a much-studied valuable region which, according to the treaty, will continue as a nature movement under the custodianship of the Smithsonian Tropical Research Institute.

Various parts of the existing Panamanian forests are unique tourist attractions. Just off a main road can be found a greater variety of bird species than in the United States and Canada combined. At least 16 species of migratory birds breed or winter in Panama's forests, according to Mr. Wright.

The decreasing and fragmented forest area poses enormous dangers to wildlife. Mr. Campanella's letter in Appendix C details the threats to herbivores, frugivores, and carnivores alike. He gives an example where a biologically sound area of at least 14,000 hectares is needed to support breeding populations of mammals such as ocelots, margays and howler monkeys. This area could support no more than a dozen otters, six pair of tapirs and one pair of harpy eagles, he said. The remaining forest area in 1978, in the Canal watershed is down to about ten times this minimal area. The fragmentation of this forest area, however, is rapidly decreasing its suitability as a wildlife habitat. The Government of Panama has tightened hunting restrictions, but historically the law enforcement has had little effect on preserving wildlife.

In summary, the protection of Panama's wildlife would be improved by the following actions:

- Preservation of the forests.
- Enforcement of existing hunting laws and regulations.
- Development of management programs.

4. Health, Sanitation and Water Pollution

Ever since the pioneering efforts of Dr. William Gorgas, Panama and the Canal region have been models of good health and sanitation practices. As Dr. Jack Millar of the Gorgas Memorial Institute wrote, the Canal itself may have acted as a barrier to North/South movement of diseases while quarantine provisions on ships transiting the Canal has created an East/West barrier.

The Canal Zone has an on-going program of spraying, grass cutting, innoculations, garbage collection, and monitoring and maintaining water quality. These will all become the responsibility of Panama in October 1979. The new Panama Canal Commission will pay the government of Panama $10 million a year from tolls for these as well as other services.

The Canal Zone already follows EPA standards regarding herbicides and pesticides applied in preventive maintenance programs.

A detailed review of health and sanitation matters is given by Dr. Rosenfield in Appendix C. She notes that difficult problems exist in the urban and rural areas of Panama. Tuberculosis, enteric diseases and malaria are major concerns. The expected population growth will magnify the need for basic health services, good nutrition and maintenance of food supplies, more sewers and sewage treatment, and health education.

The following recommendations were offered by Dr. Rosenfield.

-- Collect information and data to:

- Determine the area is health status (causes of mortality, death rate, birth rate, prevalence of disease, disease vectors and nutritional status of populace.)

- Evaluate health services (responsibility and authority of different Panamanian agencies, role of the Gorgas Memorial Institute, and health laws and their enforcement.)

-- Needed actions:

- Maintain existing health and sanitation services (AID has a good record for training programs in foreign countries).

- Monitor the movement of migrants.
- Review the results of Egypt running the Suez Canal since 1956.

In recent years, domestic waste waters have had increased chemical content. Detergents are widely used in Panama. Presently, stream dilution is the primary treatment for waste water and sewage. Available water purification techniques are costly.

Sewage systems in much of Panama City and Colon are old and heavily burdened. They discharge directly into the ocean. The Panama Canal Company has installed marine sanitation devices on many of its boats, but the Company decided against building any other sewage treatment plants and thus discharges raw sewage into the Canal.

The Panama Canal Company, which notes an increase in oil tanker traffic, is very concerned about oil spills. The Company performs the same function as the Coast Guard in the U.S. regarding oil spill prevention and clean-up. They have contingency plans and some clean-up equipment and facilities suitable for small oil spills. (A tanker collision is a nightmare which has yet to happen.) About 70% of existing oil spills are generated by the Company itself.

5. Dredging

Maintenance dredging in the Panama Canal is a continual operation. There are two large dredges and much special equipment owned and operated by the Canal Company. In recent years the average annual volume dredged has fallen to about 1.5 million cubic yards. This dredging is to remove silt and slide material, as it is important to maintain water depths. Deforestation has not significantly increased silting into the Canal, according to a company study.

The Canal Company monitors the channels but not Lake Alajuela. Certain critical locations have been widened to increase the safety of ship passage; bank stabilization techniques are also now used. After the treaty goes into force, the Panama Canal Commission will not be responsible for dredging any Panamanian ports and harbors, yet the Commission may dredge if someone pays for the work.

The ecology of the Canal was created by dredging in the early 1900's. In the last 70 years, an ecosystem adapted to dredging has developed. The geographical layout of Panama has, to date, kept industrial pollution out of the dredge spoils.

A number of dump sites have existed for years for the dredge spoils. Again, an ecosystem has grown up on the dump sites. Some of the dikes need repair to prevent the old spoils from returning into the channels.

Aquatic weeds, floating and attached, are an annoying problem in the Canal. They possibly could interfere with shipping as well as serve as a habitat for disease-carrying insects. At present, the Canal Company cuts and removes many tons of weeds and poisons others with copper sulfate. They recently introduced the fish "White Amur" to eat the weeds.

Mr. Campanella and Mr. Hendrickson expressed concern about the consequences of dredging. The aquatic weed problem could intensify if the deep lagoons are filled with dredge spoil.

All future dredging and spoil disposal should be the subject of an EIS and studied carefully by the JCE.

II. C. The Joint Commission on the Environment

The Treaty language creating the Joint Commisssion on the Environment (JCE) is general and there is no stated jurisdiction. Article XIII states that in the year 2000, the Canal will be turned to Panama in "operating condition".

Some panel members approved of the relatively undefined nature of the JCE. Detailed authority, responsibility, make-up, procedures, etc. need to be established by Panama and the U.S. working together. Mechanisms for implementing the whole treaty have been established in Panama and a group in the U.S. State Department is preparing ideas on the JCE. But unlike other aspects of treaty implementation, no bi-lateral discussions on the JCE had taken place by December 1978. OTA's Panamanian representative, Augusto E. Zambrano, believed that a bi-lateral group, perhaps a predecessor to the JCE, should be formed soon to meet and recommend a charter for the JCE. Any unilateral action on the JCE would not be productive, he said.

The Canada-US International Joint Commission (IJC) was discussed as a potential model for the JCE. The following aspects of the IJC operation were gleaned from John Hendrickson's comments at the Ad Hoc Panel meeting, from his letter included in Appendix D, and from the sub-panel meeting on the JCE held by OTA on October 25, 1978:

1. IJC studies result in recommendations to the U.S. and Canadian governments.

2. IJC looks only at the technical or scientific aspects of a problem. Economic constraints, political feasibility, social and institutional impacts are left up to the individual governments.

3. IJC does not decide what action should be taken and does not

implement the decisions unless requested to do so by both governments.

4. IJC gets back-up data, if needed, from both governments. In general, the IJC gets excellent cooperation from both countries.

5. IJC members act as independent technical workers. They apparently do not get "instructions from their government."

6. The IJC is funded as a line item in State Department budget, but for administrative purposes only. IJC has some limited discretionary funds for quick, inexpensive studies. In general, the IJC prepares yearly budgetary needs and the respective governments decide how to fund the IJC. Each government pays the cost of its own members and staff. Some of the studies may require greater participation by one government compared to the other, but, in general, the target is fifty-fifty cost sharing.

7. When the IJC "reports to its government," it does so to the Canadian Desk of the U.S. State Department. This desk sets the final U.S. assignments and priorities. In practice, before the State Department sets a U.S. position relative to the IJC, they usually check with many other U.S. government agencies, particularly with EPA.

8. The U.S./Canadian treaty does allow for any one government to ask the IJC for a particular study. (This has never happened in the 70 year history. All assigned studies were agreed to by both governments.)

9. Ideas for IJC tasks and investigations have stemmed from such diverse sources as letters from concerned citizens and news media accounts.

10. The IJC is not required to comply with U.S. or Canadian law (it need not prepare environmental impact statements, is exempt from the Freedom of Information Act, etc.).

11. The embassies have no power over the IJC, but like to be kept informed.

12. The IJC has six commissioners. The three from the U.S. are nominated by the President, and confirmed by the Senate. There are three Canadian commissioners. Two commissioners (one U.S., one Canadian) are full-time; the others are part-time. The U.S. commissioners have a fixed term of 2 years. There are no stipulations on the background and experience necessary to be appointed as an IJC commissioner.

13. The IJC relies heavily on advisory boards. These plan, conduct, and report on technical/scientific problems assigned by the IJC. They make explicit recommendations. The personnel on the advisory boards are appointed by the IJC from government agencies such as EPA, the Bureau of Reclamation and the Army Corps of Engineers. The costs of these experts are borne by their parent agencies.

14. The IJC receives the final reports from an advisory boards, assesses other information the commission may have collected, and then writes its own report with recommendations to the two governments.

15. The IJC has three separate staffs: a U.S. staff in Washington, D.C., a Canadian staff in Ottowa, and a joint staff in Windsor, Ontario devoted to overview of the IJC work on the "Great Lakes Waters Quality Agreement."

16. Toward furthering its objectives, the IJC has a continuing contract with the U.S. Geological Survey, at about $400,000 per year, to measure the quantity and quality of water along the U.S./Canada boundary.

The Panama panelists thought that many of the preceding 16 points might be applicable to the Joint Commission on the Environment.

Mr. Spear reported that the State Department is in the process of assembling ideas for the JCE. They plan to meet soon with Panamanian officials so that a workable shape can be proposed for the commission. The panelists, particularly Mr. Wright, noted that the only meaningful present efforts to protect the environment of the Panama Canal are the proposed AID project and the JCE. This new joint commission deserves careful study, they emphasized.

The Treaty states the responsibility of the JCE in Article VI to:

- review periodically treaty implementation,
- study potential environmental problems, and
- recommend, to the two governments, ways to avoid or mitigate problems.

The treaty also states that the JCE reports to the two governments. Messrs. Campanella, Hendrickson and Wright agreed that the JCE should not be tied to, or report to the new Panama Canal Commission.

It is clear that, like the IJC, the JCE is expected to recommend only and not to decide or implement environmental actions.
If the two governments so authorize, it appears desirable that the JCE should have the power to study all items that might affect the environment of the Panama Canal. Mr. Zambrano indicated that it was likely that the Government of Panama would approve this wide-ranging scope if it was clear that it was for the purpose of study only. Problems occurring in Panamanian territory will be under Panamanian jurisdiction.

If this ground rule goes into effect, the JCE will monitor the Canal's watershed area (over 80% of which will be under Panamanian jurisdiction), industry (including factories that may utilize the waters of the watershed), agriculture, migrants, land use plans, forests, water quality and supply, wildlife, pollution, dredging, health and sanitation.

With regard to the organization of the JCE, the sub-panel thought the IJC was a good model. The group decided that if they were to choose the U.S. commissioners they would select a scientist, a person with experience in environmental management, and a third person with an international or diplomatic background. They thought an ex-congressman might be an excellent choice, but frowned on the selection of an ex-governor of the Canal Zone.

The sub-panel recommended that a single, small professional staff for the JCE be stationed in Panama. A large staff with broad detailed expertise seemed inappropriate in light of the IJC's success with advisory boards.

Agreement was not reached on means of funding the JCE operations. Sub-panel members Campanella, Wright and Hendrickson preferred that funds should be appropriated by the two governments and not taken from Canal tolls. Dr. Gibbs, in his letter in Appendix D, wondered if environmental controls have a marginal affect on the Canal operation. If so, an economic study might reveal that some portion of the environmental protection might reasonably be charged to tolls.

Panelists David Parker and Frank Wadsworth believed that environmental protection of the Canal should be fully supported from Canal tolls. Mr. Galindo argued as strongly that funds should be appropriated by the two governments.

The sub-panelists suggested the following five initial tasks, not necessarily in order of priority, for the JCE:

- prepare a scope of operations and procedures to be approved by the two governments,

- assist the AID project,
- develop a single data base of Panama environmental information,
- prepare a priority list of environmental problems, and
- monitor the environment and issue regular reports.

III. ENVIRONMENTAL ASPECTS OF PANAMA'S CANAL ZONE DEVELOPMENT PLAN

In May 1978, the Republic of Panama issued its "National Development and Recovery of the Panama Canal Zone -- Working Document." This report details plans for Panamanian development resulting from the new Panama Canal Treaty.

The report presents the Panamanian philosophy underlying the development of the Zone. It outlines specific plans for developments and includes strong statements recognizing the need to safeguard the environment while all this is being done.

The report does not present a land use plan. It does not give a priority list of projects, budgets, timetables or personnel requirements.

Thus, it is impossible now to analyze any definitive potential environmental effects. Nevertheless, a summary of the stated Panamanian projects might be useful.

Separate areas of the report deal with plans for 1) transisthmian development, 2) Atlantic coast development, 3) Pacific coast growth, and 4) protection of the Canal watershed.

With regard to transisthmian projects, the Panama railroad is singled out as a potential tool for increasing and diversifying cargo. An unspecified, not-too-costly modernization could be cost-effective and add about 100 jobs, according to the report.

Almost $100 million is suggested for highway projects. A new oil pipeline was considered and then shelved for the present in favor of an oil terminal at Puerto Armuelles.

The Atlantic coast development is aimed primarily at the city of Colon and nearby areas. The population of Colon is about 92,000 and is expected to grow to about 200,000 by the year 2000. Over 22,000 new housing units will be required over and above the current need for 12,000 more units. The government sees a national need here for growth in all existing industries, including tourism.

Some examples of development are:

o A container port of 30 hectares at Coco Solo is planned for construction this year. About $38 million is earmarked to build two piers, along with some area suitable for marshalling cargo for small vessels. The report notes that this facility will need more potable water and electricity, along with a railroad spur and street improvements and storage facilities.

o The Colon Free Zone (now 38 hectares) may be expanded by 10 hectares at an eventual cost of $38 million. Panama hopes that eventually "assembly" industry will build up here.

o The Cristobal-Mt. Hope area (225 hectares) is a potential site for future industry. For this to happen, increased water supply, electricity, refrigeration, storage, sewage treatment and garbage disposal must be provided.

o Ft. Gulick, Ft. Randolph and Manzanilla Island are expected to be developed as residential and tourism areas. Additional access roads, sewage systems, power supplies, etc., have to be constructed.

Growth along the Pacific coast is envisioned primarily about Panama City and the Balboa Maritime Port. The latter reverts to Panama in October, 1979. It covers 320 hectares, has about 12 docks, rail and access roads, and bunkering of fuel and water is available. The current plan is to try to increase use of the port with only minor capital investment. One plan is to build a shipyard in Balboa with ship repair ability, with 3 dry docks. About $7 million will be initially invested so that operations might begin in 1980. Again, such things as sewage treatment, water supply and power must be provided.

Panama City now has 700,000 inhabitants. The year 2000 may see 1.5 million people there. The Government of Panama sees the need for a comprehensive zoning plan and capital construction for roads. Nearby islands in the Pacific entrance to the Canal could be developed for tourism and recreation, according to the government.

These new and enhanced industrial developments obviously require expanded services and this means that dangers to the environment will spread. The report emphasizes Panama's serious commitment to protect the water supply from the Canal's watershed. At the same time, exploitation of the watershed is planned for industrial development.

It is noted that the historical and on-going deforestation has added considerable sediment to Lake Alajuela. At the present rate, the water in this lake will be reduced by 50% by the year 2000.

Slash-and-burn farming is singled out as a poor agricultural system. The expanding population and agriculture are given as primary causes of leveling of the land. Fifty-eight percent of the land area has been deforested; if continued in an uncontrolled way, the Canal's water supply would be in danger.

The report makes it clear that the first priority of the watershed is to provide potable water for the population, in particular in Colon and Panama. Existing water filtration plants handle about 87 million gallons per day. The government hopes to increase this to 145 million gallons per day, with construction beginning in 1978.

A fair amount of navigation takes place on Lakes Gatun and Alajuela.

An increase of docks, piers and traffic control may be needed.

A lumbering industry is possible. (Some timbering recommendations are offered by Mr. Wadsworth in Appendix D.) About 16% of the watershed's land is suitable for farming; much more than this (58%) has been deforested. The slash-and-burn farming is clearly inefficient, as are the relatively old fashioned techniques used for cattle raising. A land use plan, with zoning, would be useful.

The possibility of mining in the watershed is mentioned, but little data are available on resource potential. There is an existing privately-owned cement plant and one almost completed government-owned plant.

The Government of Panama is planning studies of hydro-electric power plants and potential locations of new educational and recreational areas.

Coordination with the Panama Canal Commission and the U.S. military is recognized as necessary for the environmental protection of the Canal. A large part of the watershed area will be under the full jurisdiction of Panama. The report mentions five laws (Law decree 39 of 1966, Law 98 of 1961, Law 45 of 1963, Law 35 of 1966, Decree No. 23 of 1967) of Panama that apply to such environmental matters as forest resources, water and sewage systems, controls on water usage, and hunting and fishing restrictions. Panama also signed the 1940 Convention of Nature Protection and Wildlife Preservation in the Western Hemisphere.

A plan called URBE, scheduled to start in 1979 with $28,000,000, is aimed at building up cities outside of Colan and Panama.

The report explicitly states that:

- Restrictive measures must be placed to best utilize potable water and navigation.

- In certain critical areas, agricultural and forestry exploitation must be excluded.
- Agriculture and livestock handling should be restructured.
- Certain important areas may be designated as national parks and national monuments. (The following areas, according to Mr. Wright, are especially deserving of protection: the pipeline road area, the peninsulas west and south of Barro Colorado, Madden Forest and the Alajuela Lake Basin.)
- Key areas should be reforested.
- A plan should be prepared that will measure physical and biological aspects of the watershed, consider future investments in the area, analyze the impacts of present and future programs on land, water, air and ecosystems, and propose control measures and enforcement.

The report makes it abundantly clear that Panama recognizes its commitment to protect the water of the Panama Canal watershed. Panama's sensitivity to potential environmental degradation is also clear. But industrial and agricultural growth are major goals for the country; these may have major impacts on the environment.

APPENDIX A

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APPENDIX B

PANEL PRESENTATIONS

STATEMENT OF DAVID H. POPPER
SPECIAL REPRESENTATIVE OF THE SECRETARY FOR PANAMA TREATY AFFAIRS
AT
OFFICE OF TECHNOLOGY ASSESSMENT SEMINAR ON ENVIRONMENTAL PROBLEMS IN THE PANAMA CANAL AREA
WASHINGTON, D.C.
AUGUST 10, 1978

I AM HAPPY TO HAVE THE OPPORTUNITY TO OPEN THIS MEETING, IN BRIEF REMARKS OUTLINING THE MAJOR ENVIRONMENTAL CONSIDERATIONS IN THE MINDS OF THE STATE DEPARTMENT AND OTHER AGENCIES OF THE GOVERNMENT AS WE MOVE TOWARD IMPLEMENTATION OF THE PANAMA CANAL TREATY OF 1977.

I AM IMPRESSED WITH THE UTILITY OF THIS SEMINAR, ASSEMBLING AS IT WILL THE THOUGHTS OF A NUMBER OF DISTINGUISHED AUTHORITIES ON VARIOUS ASPECTS OF THE ENVIRONMENTAL PROBLEMS ASSOCIATED WITH THE DEVELOPMENT AND MAINTENANCE OF THE PANAMA CANAL. I HAVE NO DOUBT THAT THE SEMINAR WILL MAKE A USEFUL CONTRIBUTION TO CONGRESSIONAL THINKING AND ACTION ON THIS SUBJECT--USEFUL NOT ONLY TO THE PANAMA CANAL SUBCOMMITTEE OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE, WHICH AS I UNDERSTAND IT PROPOSED THE SEMINAR, BUT MUCH MORE BROADLY TO ALL OTHER INTERESTED PARTIES.

You may be certain that there is no disposition whatever in the United States Government to overlook or minimize the environmental problems confronting us under the Panama Canal Treaty. American non-government organizations concerned with environmental matters have kept these problems in the forefront of our attention in recent years. United States Government officials, including myself, have received and assessed the comments, proposals and suggestions of a number of spokesmen on environmental problems. The Department of State prepared an Environmental Impact Statement with relation to the Panama Canal Treaty, circulated it for comments, and revised it on receipt of the reactions of concerned individuals and groups.

This has been a useful process, and it has appreciably clarified our thinking on these matters. Through it, I believe we have laid the basis for a mutually supportive approach by government and non-governmental groups in dealing with the problems we all recognize lie ahead of us. Our objective should be to resolve these problems in a cooperative spirit, in a broad partnership embracing both American and Panamanian interested parties, all united for constructive purposes. While our respective priorities will not always be identical, our ultimate

OBJECTIVES ARE GENERALLY SIMILAR. THAT IS THE POINT TO BEAR ALWAYS IN MIND.

. . .

THE GUIDELINE FOR OUR APPROACH TO CANAL ENVIRONMENTAL PROBLEMS IS SET OUT IN ARTICLE VI OF THE PANAMA CANAL TREATY. AS YOU KNOW, UNDER THAT ARTICLE THE UNITED STATES AND PANAMA COMMIT THEMSELVES TO IMPLEMENT THE TREATY "IN A MANNER CONSISTENT WITH THE PROTECTION OF THE NATURAL ENVIRONMENT OF THE REPUBLIC OF PANAMA," THROUGH CONSULTATION AND COOPERATION. THE VEHICLE FOR DOING SO WILL BE A JOINT COMMISSION ON THE ENVIRONMENT, WITH EQUAL REPRESENTATION FROM THE TWO COUNTRIES, TO REVIEW TREATY IMPLEMENTATION AND MAKE RECOMMENDATIONS FOR AVOIDING OR MITIGATING THE ADVERSE ENVIRONMENTAL IMPACT OF ACTIONS TAKEN UNDER THE TREATY. THE TWO GOVERNMENTS ARE COMMITTED TO PROVIDE THE COMMISSION WITH COMPLETE AND TIMELY INFORMATION ON ACTIONS UNDER THE TREATY WHICH MIGHT AFFECT THE ENVIRONMENT.

WE EXPECT TO ORGANIZE THE JOINT ENVIRONMENTAL COMMISSION SO THAT IT MAY FUNCTION FROM THE ONSET OF ACTIVITIES UNDER THE TREATY. WE THINK IT SHOULD INCLUDE AMONG ITS MEMBERS AND STAFF KNOWLEDGEABLE PERSONS WHO CAN SPEAK FOR THE CONSTITUENCIES REPRESENTED IN THIS ROOM.

AND AS WE ENTER ON THE STAGE OF PRELIMINARY PLANNING, WE HAVE VERY MUCH IN MIND THE SPIRIT OF COOPERATION WITH WHICH ENVIRONMENTAL PROBLEMS SHOULD BE ANALYZED AND HANDLED.

ENVIRONMENTAL FACTORS WILL I AM SURE FIGURE PROMINENTLY IN ANY ACTION THE UNITED STATES AND PANAMA MAY DECIDE TO TAKE TO CARRY OUT THE PROVISIONS OF ARTICLE XII OF THE PANAMA CANAL TREATY, PROVIDING FOR A JOINT STUDY OF THE FEASIBILITY OF A SEA-LEVEL CANAL. THAT ARTICLE ALSO AUTHORIZES THE UNITED STATES TO ADD A THIRD LANE OF LOCKS TO THE EXISTING CANAL. THE DEPARTMENT HAS INDICATED THAT ENVIRONMENTAL IMPACT STATEMENTS WOULD BE PREPARED IN CONNECTION WITH ANY SEA-LEVEL CANAL STUDY, AND WITH A PROPOSAL FOR A THIRD LANE OF LOCKS IF THAT OPTION SHOULD BE FURTHER EXPLORED. WE HAVE STATED THAT WE DO NOT INTEND TO USE NUCLEAR EXCAVATION TECHNIQUES IN CONSTRUCTION OF THIS CHARACTER.

AS FURTHER EVIDENCE OF OUR CONCERN WITH ENVIRONMENTAL MATTERS UNDER THE TREATY, I WOULD REMIND YOU THAT ON SEPTEMBER 7, 1977, WHEN THE TREATIES WERE SIGNED, THE TWO GOVERNMENTS FORMALIZED THREE ANCILLARY ARRANGEMENTS.

-- THROUGH AN AGREEMENT CONCLUDED UNDER THE TERMS OF THE CONVENTION ON NATURE PROTECTION AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE, BARRO COLORADO

Island in Gatun Lake was declared to be a Nature Monument. An exchange of notes provides that the Smithsonian Tropical Research Institute should be the custodian of the island for scientific research and investigation purposes. These arrangements, made for specified periods, can be extended, even subsequent to the termination of the Panama Canal Treaty in the year 2000.

-- By another exchange of notes, the two Governments agreed that the Smithsonian Tropical Research Institute should continue its scientific activities in Panama.

-- Through a third such exchange, it is provided that the Gorgas Memorial Institute of Tropical and Preventive Medicine and its Laboratory should continue, for a period of five years, to be renewed upon request by the Institute, to use the lands and waters and the installations in which they are currently active.

. . .

Let me say a word about the timing of all these arrangements.

You will recall that, in approving the Panama Canal Treaties, the Senate established certain time limits under a reservation introduced by Senator Brooke of

Massachusetts. Thus, while President Carter and General Torrijos in effect exchanged instruments of ratification of the Panama Canal Treaties on June 16, these instruments will not take effect until April 1, 1979, and the Treaties themselves will not come into force until six months later --that is, on October 1, 1979. These dates could be advanced if Congress completed the legislation needed to implement the Treaties prior to April 1 of next year. As matters now stand, this seems very unlikely.

In a sense, this is a limiting factor. Obviously, as it organizes for Treaty implementation, the Executive Branch must be careful to avoid any action which would appear to circumvent or preempt the prerogative of Congress to adopt legislation, as appropriate, regarding the Treaty provisions. We feel, however, that there is much that we can do at this juncture.

On our side, we are organizing ourselves in Panama and in Washington, for effective handling of Treaty implementation problems--including advance planning. The Panamanian Government has set up a National Commission on Treaty matters and has centralized action responsibility in an Executive Secretariat backed by a number of working groups including one on Environment and the Canal Basin.

All concerned recognize that highest priority must be given to assuring the water supply required for Canal

OPERATIONS, THROUGH PROTECTION OF THE CANAL WATERSHED AREA. THERE HAVE BEEN DISQUIETING REPORTS ON THE EXTENT OF THE CUTTING AND BURNING OF CANAL ZONE FORESTS FOR SUBSISTENCE AGRICULTURE. REPRESENTATIVES OF THE PANAMA CANAL COMPANY ARE MEETING WITH THEIR PANAMANIAN COUNTERPARTS IN AN ENVIRONMENTAL WORKING GROUP TO DEVELOP A JOINT PLAN FOR RELOCATING SQUATTERS IN THE CANAL WATERSHED. IT IS OUR HOPE THAT JOINT ACTION TO RELOCATE UNAUTHORIZED SETTLERS WILL BE TAKEN THIS FALL, AND THAT THE LONGER-TERM TENDENCY TO ENCROACH UPON THE FORESTED AREAS AROUND THE CANAL RESERVOIRS CAN BE HALTED AND REVERSED.

IN THIS REGARD, WE ARE SUPPORTING THE WATERSHED MANAGEMENT PROJECT WHICH AID IS UNDERTAKING. REPRESENTATIVES OF AID WILL BE DISCUSSING THIS PROJECT WITH YOU DURING THE SEMINAR.

. . .

THOSE OF US IN THE EXECUTIVE BRANCH MUST WORK CLOSELY BOTH WITH CONGRESS AND WITH THE GOVERNMENT OF PANAMA, AS WE MOVE TOWARD TREATY IMPLEMENTATION. WE HOPE THE CONGRESS WILL FRAME ITS LEGISLATION IN TERMS WHICH GIVE THE PRESIDENT SUFFICIENT FLEXIBILITY TO NEGOTIATE DETAILED ARRANGEMENTS WITH PANAMA, TAKING INTO ACCOUNT THAT GOVERNMENT'S SENSITIVITIES AND POLITICAL REQUIREMENTS. WITH SUCH LEGISLATION, WE COULD PROVIDE ADEQUATE RESOURCES

FOR SUPPORT OF THE JOINT COMMISSION ON THE ENVIRONMENT. WE WOULD ALSO BE ABLE TO PROVIDE THE NECESSARY RESOURCES FOR THE PANAMA CANAL COMMISSION TO CARRY OUT PROGRAMS OF ENFORCEMENT, CONSERVATION AND REFORESTATION AS PART OF THE REGULAR OPERATION OF THE CANAL. WE WILL ALSO NEED LEGISLATIVE SUPPORT TO FINANCE THE AID WATERSHED MANAGEMENT PROJECT.

FINALLY, ANY CONGRESSIONAL MANDATE FOR A SEA-LEVEL CANAL STUDY SHOULD IN OUR VIEW PROVIDE FOR THOROUGH CONSIDERATION OF ENVIRONMENTAL FACTORS. THE PROPOSALS NOW BEFORE THE CONGRESS, ON WHICH I TESTIFIED LAST JUNE, FULLY RECOGNIZE THIS NEED. I AM CONFIDENT THAT ANY SUCH STUDY WOULD GIVE PROPER WEIGHT TO ENVIRONMENTAL CONSIDERATIONS.

. . .

IN SUMMARY, WE ARE PROCEEDING FROM THE OUTSET ON THE BASIS OF FULL REGARD FOR ENVIRONMENTAL PROBLEMS CONNECTED WITH THE IMPLEMENTATION OF THE PANAMA CANAL TREATY. MUCH OF THE CREDIT FOR THIS SITUATION MUST GO TO THOSE ORGANIZATIONS AND INDIVIDUALS WHO HAVE MADE THEIR VIEWS KNOWN ON THESE MATTERS. WE HOPE TO CONTINUE TO RECEIVE THE THOUGHTS AND IDEAS OF INTERESTED GROUPS AND TO REACT TO THEM FROM OUR OWN PERSPECTIVE. WE WANT TO WORK WITH THE PUBLIC, AND INCREASINGLY WITH THE GOVERNMENT OF PANAMA, TO TRANSLATE EXPECTATION INTO ACHIEVEMENT AND TO OVERCOME THE DIFFICULTIES WE MAY ENCOUNTER.

IN A GENERAL SENSE, THE IMPLEMENTATION OF THE PANAMA CANAL TREATY CAN PROVIDE A NOTABLE EXAMPLE OF THE GAINS TO BE MADE BY FAIR AND FRIENDLY PARTNERSHIP BETWEEN TWO COUNTRIES OF WIDELY DIFFERING SIZE AND CHARACTERISTICS. YOUR INTEREST AND SUPPORT WILL PLAY AN IMPORTANT PART IN PRODUCING THIS RESULT.

B-10

Statement for the Office of Technology Assessment Seminar on Panama Canal Environmental Problems

(presented by M. Spear, U.S. Department of State)

I appreciate the opportunity to meet with this panel and to discuss the highlights of the Environmental Impact Statement on the Panama Canal Treaties, which was issued by the Department of State last December, as well as our tenative ideas on the organization and functions of the Joint Environmental Commission, which is to be established under the Treaties.

The EIS identified six principal issues or problems in connection with the new Treaties:

1. Preservation of the Canal watershed forests and their wildlife;
2. Maintenance of health and sanitary standards, including control of water pollution;
3. The environmental problems associated with the possible construction of a sea-level canal or a third lane of locks to the present Canal;
4. The preservation of archeological and historic sites in the Canal Zone area;
5. The environmental effects of an increase in Canal tolls (particularly in the United States); and
6. The impact of the Treaty provisions on employment in the Canal Zone.

I don't believe that experience since last December has indicated any significant omissions in the EIS, but there have been a number of subsequent developments relating to the problems identified that I would like to cover this morning.

First, let me summarize the major points of the EIS regarding each of these six major issues:

1. Forests - Preservation of the forests in the Canal watershed is clearly the highest priority environmental task confronting us as we move to implement the new Treaties, both because of the Canal's dependence on the forests for its water supply and operations, and because of the acceleration of the destruction of these forests. (It is estimated that about 20% of the forests in the Zone have been cut and burned by illegal squatters.) And with the forests, their wildlife is also being lost.

As a first-priority, short-term response to this problem,
US-Panamanian
the/Subcommittee on Environment, which Ambassador Popper has described to you, is in the process of developing a plan for relocating the squatters in the present Canal Zone area. As part of this program, there has already been a very gratifying publicity campaign in the Panamanian media pointing out the importance of preserving this woodland. I believe Dr. Galindo and his colleagues have played a major role in this campaign.

For the longer term, we are actively supporting the Watershed Management Project to which the US Agency for International Development will provide a loan of $10 million, to be matched by equal funds from the Panamanian Government. AID representatives are here today to describe and discuss this with you, so I will leave the details to them. I might add that this project will fit in with Panamanian plans to make the entire Canal watershed area, which runs well outside of the Canal Zone, into a protected forest reserve.

Preservation of the wildlife in the Canal area is also a high priority objective, since a number of rare and endangered species make these forests their habitat. In this connection, thanks to the impetus of environmental concern for the Canal, the hunting laws in the Zone have been tightened up. Also, in developing the Panamanian capability for enforcement, the AID Watershed project will also contribute to the preservation of these species. And in addition, the agreements and arrangements which Ambassador Popper has described for Barro Colorado island and the Smithsonian Tropical Research Institute will strengthen the conservation efforts in this area.

2. Health and Sanitation - As we all know from our history schoolbooks, the conquest of disease in connection with the construction of the Canal was as great a feat as the engineering triumph itself. But one has to visit the Canal and see the

scale of the continuing effort to maintain health and sanitation standards to really appreciate what an environmental challenge this still is today.

Because of these standards, the Canal area serves as a barrier to the spread of disease; both by the ships transiting the Canal as they pass through quarantine, and for the spread of tropical diseases between South and Central America. Under the Treaties, Panama will take over many of the services and enforcement functions: mowing and spraying to control malaria, garbage collection, innoculations, quarantine,/ control of oil spills, etc. and the US will pay Panama for these services under the Treaty provisions. Sewage treatment is also essential, and AID and international lending agencies have been active in assisting the Panamanian Government in this field. The agreement for continuation of the activities of the Gorgas Memorial Institute and its Laboratory in the field of tropical medicine and prevention of disease is also/an important element in maintaining the health standards of the Canal area and its surroundings.

3. Sea-level Canal/ Third Lane of Locks - Ambassador Popper has described the Treaty provisions relating to a joint study of the feasibility of such a canal and the construction of a third lane of locks to the present Canal. The EIS noted that there has been a high degree of concern within the scientific community over the potential environmental hazards from such projects. In connection with the 1970 sea-level canal study, the National Academy of Sciences sponsored a symposium at

which many of these fears were spelled out, and it subsequently laid out a proposed plan of study relating to these hazards. More recently, at the request of the President's Science Advisor, the Academy did a short-term update of this information, which again indicated the areas where there was a need for research and information.

Since the EIS was published, the Acting Secretary of State has issued a statement containing assurances that environmental studies and a full Environmental Impact Statement will accompany any feasibility study for a sea-level canal. More recently, the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee has held hearings on proposed legislation to update the 1970 sea-level canal study. These draft laws all contain provisions for environmental studies, witnesses from environmental groups have testified, and this seminar is an outgrowth of those hearings.

4. Preservation of Archeological/Historic Sites - The fourth major issue identified in the EIS was the preservation of archeological and historic sites in the Canal Zone area. These sites were generally described, but it was noted that one of the main obstacles to their preservation was the lack of professional archeologists to conduct surveys and identify sites for preservation. The US Army is carrying out such a survey of military areas; the EIS recommended similar surveys in other areas of the Canal Zone. While these sites do not appear to be

in danger at present, this clearly is an obvious matter for the Environmental Commission to pursue once it begins operation. It should be an area of particular interest and importance to the Panamanian members of the Commission.

5. Effects of Increased Tolls - The Final Environmental Impact Statement sought to make a preliminary estimate of the impact of increased tolls (required to fund the higher annuities to Panama) on the environment in the US, but deferred final conclusions until new projections were made of traffic sensitivity to these increases. This study was completed in the early part of this year, and the effects of toll increases on such factors as oil and noise pollution, fuel consumption, etc. have now been prepared. They will be issued as supplementary information to the Final EIS in a few weeks. It appears from this examination that these effects will be minimal overall.

6. Employment - The Treaty provides that Panamanians will be brought into increasingly responsible positions in the Canal Commission and in greater numbers. As a result, a certain number of present employees will be displaced. The Final EIS describes the measures being taken to ameliorate this Treaty impact: provisions for early retirement in the implementing legislation; special immigration; etc. This is an important element of our joint planning with the Panamanians for a smooth transition to the Treaty regime. While it is of great importance to those involved, it is of lesser interest to environmentalists.

I would next like to outline our tenative thinking on the organization and functions of the Joint Environmental Commission which is to be set up under the Treaty. I am distributing a section on this which will appear in the supplementary information to the Final EIS.

At the same time, I would emphasize that all of this is highly tenative, really only a working document. As Ambassador Popper has noted, if the Commission is to be successful, it must be a cooperative effort with our Panamanian colleagues. And we still need to see what their ideas for the Commission are and work out its operations with them.

With these caveats in mind, let me outline some ideas on its functions:

- First, it should develop a data base to support its operations. Much of this documentation is being gathered for the Watershed Management project; the Canal Company and Panamanian agencies also have a wealth of studies, maps, statistics, etc. which should enable the Commission to avoid duplication of effort.

- As this indicates, cooperation with other agencies will be both necessary and helpful as the Commission starts to work. And this cooperation should encompass private and international environmental organizations, as well as US and Panamanian Government agencies.

- The Commission will also monitor measures taken to implement the Treaties, its primary function, and for this it will need full and timely information on actions while they are still in the planning stage, so that their environmental effects can be assessed and useful recommendations made to Governments.

- The Commission should also have the funds and other resources to undertake studies and analysis, if its recommendations are to be meaningful.

- We believe that annual reports to the two Governments would be a useful means of focusing attention on environmental matters in the Canal area and of indicating the value of the Commission. It can also form a useful link to interested private environmental groups.

- And finally, there will be a need for follow-up on the Commission's recommendations.

As for the Commission's Membership and Organization, we think that a balance among government officials (who know how to get things done through government organizations), environmentalists (for their expertise and connections with the environmental community), and prominent public figures (to add weight to the Commission's recommendations) might be most effective. Limiting the size of the Commission (perhaps three from each side) would provide a group that could work closely together on a personal basis and could meet on short notice, if necessary.

A small professional staff located at the Canal Commission would also be useful in our view to provide continuity and expert support for the Commissioners. And, of course, the Commission and its staff will require adequate funding, if they are to be effective.

Finally, we think it important that the Panama Canal Commission should budget regularly for reforestation and other conservation measures as part of its capital improvements budget, since these measures are part of the effective operation of the Canal.

Lastly, let me list some of the priority tasks which the Commission should address as it starts to operate. Clearly the first is the preservation of the watershed forests. Assembly of an adequate data base will also be necessary for effective operation, formulation of sanitary and other health measures and regulations, and rules and efforcement measures for the protection of wildlife also merit early attention.

These are the tenative ideas which we shall want to discuss with the Panamanian Government as we move forward toward implementation of the Panama Canal Treaties.

I appreciate this opportunity to meet with this panel and will be happy to answer any questions you may have.

A Description of the Canal Watershed and of a Government of Panama Watershed Management Project Proposal to be Submitted for A.I.D. Financing

(delivered by Robert Jordan, A.I.D.)

Introductory Remarks

I would like to discuss two subjects. First, I want to briefly describe the physical and other characteristics of the Canal Watershed. Secondly, I will describe the current plans for watershed management activities in the Canal watershed which are part of a Watershed Management Project to be financed by AID. Before discussing these topics, I would like to clarify two points which have been misunderstood in earlier discussions today. First, the Canal watershed and the Canal Zone are not the same. The Canal Watershed is several times larger than the present Canal Zone. Secondly, the Watershed Management Project is a project of the Government of Panama, not of AID. The former is responsible for developing and implementing the project. If funding is authorized, AID would lend the Government of Panama approximately $10 million to cover about 60% of the project costs.

Also, it should be mentioned that planned project activities are to be located outside of the present Canal Zone with the exception of the proposed Pipeline Road National Park for which implementation would not begin until the area reverts fully to Panamanian jurisdiction after October 1, 1979.

Description of the Canal Watershed

The watershed of the Chagres River, i.e., the Canal Watershed covers 326,225 hectares. It is located in the narrow central part of the Isthmus of Panama. The Panama Canal divides the watershed approximately at its center. Two man-made lakes, Gatun and Madden (Alajuela), which cover approximately 10% of the watershed's area are essential components to the operation of the Canal and are the source of water for Panama City and Colon.

The watershed has a humid, tropical climate with a mean annual rainfall of 2,700 mm. However, some parts of the watershed receive 4 meters of rain annually.

The topography of the watershed is broken except for an area west of the Canal. The major part of the watershed is characterized with hills with slopes of 45% or more and is suitable only for forest and permanent crops. Currently, 1/3 of the watershed, mostly in the Lake Alajuela sub-watershed, is in primary forest. The soils in the watershed are primarily red clay and are quite susceptible to erosion processes when the natural forest cover is removed. In many areas in the watershed there is a high potential for sheet, gully and landslide erosion.

Population growth has been fairly rapid during recent years. In 1970 more than 60,000 people resided in the watershed, an increase of 24,000 from 1960. About 1/2 of the economically active population, or about 8,000 people in 1970, have agriculturally related occupations. Most rural families practice traditional slash and burn (swidden) agriculture. About 13% are engaged in ranching activities. Many of the slash and burn farmers are part of a migratory wave of colonizers who clear forest lands and plant one or two crops of corn or rice before moving elsewhere. Often, a campesino who has cleared land will plant it with faragua grass pasture before moving elsewhere. They then "sell" their usufruct rights to ranchers who then use the land for extensive cattle grazing.

Between 1952 and 1978, the amount of the Canal watershed's land area in forest cover declined from 83% to 32% because of this rural colonization process. Land clearing has been occurring at an accelerating rate. It is estimated that an additional 7,000 hectares will be cleared during 1978. At this rate, the remaining primary forest would disappear before the year 2000.

The dramatic shift in land use, combined with natural factors, i.e., steep slopes, high rainfall, and soil type, is causing sediment yields to increase rapidly. In Lake Alajuela, a vital element in the operation of the Panama Canal because it provides water storage for the canal's gravity-flow lock systems, the annual sedimentation rate has increased by 200% in recent years despite the fact that the major part of the Alajuela sub-watershed is still in primary forest.

Hydrologic studies indicate that if the Alajuela sub-watershed is cleared of forest cover, 80% of the water storage capacity of this lake will have been lost because of sedimentation by the year 2040.

Sediment yield for the entire watershed is currently estimated to be more than 9,000,000 cubic meters per year. However, the continued shift in land uses, particularly the expansion of faragua grass pastures on steep slopes which are a major source of sediment yield, will result a rapid increase in annual sediment yield. It is estimated that should current trends continue by the year 2000, the annual sediment yield in the watershed will be more than 15,000,000 cubic meters with the major increase occurring in the Alajuela sub-watershed.

Canal Watershed Management Activities Proposed for Loan Financing by AID

The initial concept for a project to be implemented by the Directorate of Renewable Natural Resources of the Ministry of Agricultural Development was developed two years ago. Originally, the primary project focus was reforestation; however, early in the project design process it became evident that a comprehensive watershed management project would be more appropriate and the AID Mission in Panama notified AID Washington of the new project focus a year ago. However, intensive project design work did not begin until February of this year. Although project activities are fairly well defined, several project design activities are still pending. The Mission will present an interim report to AID Washington for review and comment next week.

At present, the project contemplates the following activities:

(1) Institutional Development

In order to develop sufficient capacity to design and administer watershed management programs, the Directorate for Renewable Natural Resources (RENARE) of the Agriculture Ministry will be reorganized on a program-oriented basis and its professional staff will be expanded. Substantial technical assistance and training will be provided, as well as additional physical facilities and equipment.

(2) Educational Activities

A key element in the successful implementation of watershed management activities is the effective communication of the importance of rational resource use. RENARE will develop a dual purpose educational program aimed at the target populations within the watersheds where programs are being implemented as well as the general Panamanian population.

(3) Watershed Management Activities

Three watersheds have been chosen for project activities. These are the Canal, La Villa River and Caldera River watersheds. Project activities will start first in the Canal area and it will receive the bulk of project resources.

The principal objective of a watershed management program in the Canal watershed is to reduce the elevated rate of sediment yield which enters Lakes Alajuela and Gatun. The current high rate of erosion, which is primarily caused by inappropriate land use, particularly cattle grazing in steeply sloped pastures, jeopardizes the long-term operational viability of the Panama Canal and affects the quality and quantity of water available for use in Panama City and Colon.

A preliminary land use management plan has been developed in which the most appropriate land uses have been spatially identified according to an analysis of physical factors (slope, soil depth microclimate, etc.), current land use, and the existence of special factors such as urban areas, roads, and mineral deposits.

Specific Canal watershed activities are:

(a) Forest Reserves

Within the Canal watershed, two areas in which land use activities are to be severely limited are already legally created as a forest reserve and a national park. These are the Chagres Forest Reserve and the Altos de Campana National Park. A third area known as Pipeline Road will be established as a national park when jurisdiction of the area reverts to Panama upon implementation of the Panama Canal treaties. These three areas include more than 90,000 hectares, or more than 1/3 of the land area of the Canal watershed. Under the project, management plans for these areas will be developed and implemented by RENARE. In addition, a forest trained guard/resource inspector corps will be formed.

(b) Reforestation

The land use management planning process has demonstrated that permanent vegetative cover would be a more appropriate land use for much of the Canal watershed that has been deforested and is now in pastures or used for traditional slash and burn agriculture. The reforestation activities proposed for inclusion in the project are therefore an important component of the strategy to rationalize land use in the watershed. They will provide an alternative economic activity over both the short and long term for a large segment of the Canal watershed's population and will reduce the rate of the establishment of pastures in steeply sloped hillsides. Also, the expanded forest cover will directly reduce sediment yield rates.

A total of 10,500 hectares will be reforested under the project. Generally, reforestation will be done with native species. These species are naturally found in the watershed and the seed can be collected locally. They all have commercial value in the Panamanian market. Three different types of reforestation activities will be implemented. These are forest plantations, agro-forestry (taungya) and mixed forest with permanent crops. Each type of reforestation has a specific role within the proposed watershed management strategy.

(c) Soil Conservation

The soil conservation program will involve a number of erosion control measures. These measures will consist of a variety of small location specific activities designed to control or prevent gully erosion, particularly along roadways, in pastures, and in urbanized areas.

Poorly designed, unprotected roadways, cattle trails in pastures, particularly along natural roadways, and earthmoving associated with urbanization contribute heavily to sediment yields. In the Canal watershed there are five areas where the incidence of gullying is high.

Specific control measures include grass waterways, land stabilization, gully control structures, and construction of adequately designed roadway ditching. These are labor intensive activities for which rural dwellers from the areas will be hired on a casual labor basis.

Sub-project activities will concentrate on correcting or preventing major point sources of sediment. Up to 8,000 hectares will be treated. This activity, however, will directly benefit a substantially larger number of hectares.

(d) Pasture Improvement

Pasture improvement must address the problem of sedimentation due to cattle grazing on faragua grass. The land use planning process has led to the conclusion that grazing must be prohibited on hillside slopes greater than 45 per cent where it is almost impossible to control erosion if cattle are maintained on them. On slopes less than 45 per cent, faragua grass should be replaced by stoloniferous grasses. A pasture improvement program would be undertaken primarily in the Cerro Cama and El Cacao administrative area where there are 34,000 hectares with less than 45 per cent slope in faragua grass of which 15,000 hectares have less than a 20 per cent slope.

The exact method of implementation of a pasture improvement program is still the subject of joint government of Panama-AID Mission efforts to arrive at an effective design. Current planning includes a demonstration activity in which RENARE personnel would establish 1/2 to

1 hectare trial plots on approximately 600 ranches. These demonstration plots would demonstrate to the individual rancher the potential advantages of improved pastures. They would also provide nursery material for those ranchers wishing to convert additional hectares in improved grasses.

Current planning is that AID would provide the Panamanian government with a loan of 10.8 million dollars over a five-year period for this project. The government of Panama would provide 7 million dollars. Of this total of 17.8 million dollars, 11.85 million dollars would be spent on the Canal watershed.

The tentative projected schedule for this project is as follows: submission of the project paper to Washington for approval in December 1978; negotiation and conclusion of the loan agreement during the first quarter of 1979; initiation of some activities in the Canal watershed in March or April 1979; and initiation and organization of all sub-projects in the Canal watershed by the end of 1979.

Recommended Plan of Action to support Forestation Efforts in the Canal Zone

(By Frank Morris, Panama Canal Company)

I. Introduction.

The number of actions that can be taken at this time to mitigate the current rate of forest destruction and encroachment within the Canal Zone are limited by:

1. the time remaining until the Treaty comes into effect
2. the increased level of involvement by the Republic of Panama
3. the nature of the slash-and-burn farming cycle

The implementation of the recommended plan of action should establish basic guidelines that the Government of Panama (GOP) will be able to continue once the Treaty goes into effect. With the financial assistance, technical training and institutional build up that the proposed AID watershed management project is to provide Panama's Renewable Natural Resources conservation agency (RENARE), the Government of Panama should be able to play a strong role in developing, establishing and maintaining watershed management programs to conserve the natural and human resources.

II. Nature of Problem.

Panama's resource conservation and protection efforts are at present severely constrained by strong socio-economic situations. The rapid and alarming population growth in the marginal urban areas of the cities of Panama and Colon, the rural-urban migration of unskilled labor (subsistence farmers), the present high rate of unemployment, and continual spiraling inflation are a few of the major constraining factors.

A major assumption for the successful implementation of the recommended action is the cooperation, commitment and involvement of Panamanian Government officials in a plan of action that will stop the present rate of forest destruction within the Canal Zone. The successful establishment of a working relationship for bilateral participation and action to protect the canal watershed should be of great importance to the Government of Panama. Most of the forested areas within the present Canal Zone will soon be under Panama's control and will be part of any resource conservation program in its long term development strategy to protect the quality of the natural environment.

The traditional slash-and-burn agriculture in Panama represents 50% of the national agricultural production and over 70% of the cultivated land. Listed below is the farming cycle timetable that has developed locally:

Month			Activity
January-February		Cutting	
April		Burning -	Height of the dry season just before the first heavy rains.
	1st Crop		
May		Seeding -	After the 1st heavy rain (rice and corn)
September		Harvesting -	1st Cleaning
September/October		Seeding -	(Mostly Corn) - Just after the 1st harvesting
	2nd Crop		
January		Harvesting	

Any action taken which does not incorporate the agricultural cycle will have adverse side effects and probably have limited success. Since the major environmental impact due to forest destruction is during the cutting, cleaning and burning periods, the proposed plan of action could be implemented after the first harvest in mid October.

III. Responsibility.

To effectively implement the proposed plan of action, an increased level of involvement by the Company/Government is required through:

a) adequate funds to provide an increase in the protective force and logistical (ground and aerial surveillance) support;

b) strengthen communication with the Government of Panama to reduce any adverse reaction by the press whenever an enforcement action to protect the forest from illegal commercial activity (timbering) and slash-and-burn type agriculture takes place;

c) establish formal institutional linkage with RENARE by soliciting their support in undertaking a joint environmental education campaign using the Panamanian media (radio, TV, newspaper) to stress the importance of the preservation of Panama's natural resources.

IV. Recommended Plan of Action for Combating the Deforestation Problem.

To control and mitigate the increased level of forest destruction and illegal farming activities, the following proposed plan is submitted:

a) Immediate public notification of intended actions through coordinated efforts between the Panama Canal/Military Information Offices and the Panama Press. The notice of intended actions is to increase environmental awareness among the Panamanian public and to enable the Government of Panama's policy making officials to enlist their support.

Panamanian public notification and awareness could be enhanced by such actions as:

1. Post the areas alongside the Canal Zone/Republic of Panama boundary with the support of personnel from Grounds Management Branch.

2. Announcement via helicopter loud speaker once a week for the 10 week maximum enforcement period.

3. Use of Panama/Canal Zone radio and television stations to broadcast proposed actions.

4. Publish in the Panama Press articles describing the critical environmental impact slash-and-burn agriculture has on the forested ecosystems and Canal watershed.

5. Publish in the local newspapers (weekly) the increase of air and ground patrols by the Canal Zone Police.

b) Establish an aggressive air and ground patrolling program from mid October throughout April, directed towards detaining and preventing further cutting, cleaning and burning operations.

c) Establish an inter-government committee to coordinate, assess, and recommend new measures to improve the effectiveness of the proposed plan.

d) Solicit the direct cooperation of RENARE in the implementation and enforcement of existing Panamanian Forestry laws dealing with the protection, conservation, prevention and control of forested lands in particular the areas bordering the Canal Zone.

e) Continue the effective policing and enforcement of laws to prevent the illegal use of land within the Canal Zone, until the day the new Canal Treaty goes into effect.

V. Manpower and Logistical Support.

To implement the above plan, the present Interior/Water Patrol force needs to be supplemented with the below listed personnel, equipment, and services:

1. Hire six security guards or game wardens/forest guards at the NM-3 and NM-4 grade levels to support the present manpower level of the Interior/Water Patrol Officers. Approximate cost would be $38,400 per year.

2. Establish a program that would provide Canal Zone Police with at least 40 hours per month aerial surveillance for the entire Canal Zone from mid October throughout April. From May through September, the aerial surveillance could be reduced to 10 hours per month. Approximate cost for this service would be $60,750 per year.

Note: Police air patrol is the only conceivable means of patrolling the approximate 550 square miles that make up the Canal Zone because most of this area consists of water, bush and jungle without serviceable roads and are virtually inaccessible by most conventional means.

3. Two additional four-wheel drive vehicles for the Balboa District at a cost of $6,000 per year.

4. One additional shallow draft boat, motor and trailer assembly would be needed to supplement the present Balboa District water travel capabilities. Estimated cost including shipment would be $5,500.

The total estimated cost to enforce a preventive program by more aggressive ground and aerial surveillance would be $110,650 per year.

The logistical support, needed services, and extra manpower to activate the recommended plan of action would be utilized in the following manner:

1. Manpower within the Interior/Water Patrol, together with the guards, would be distributed into five two-man teams. Working 40 hours a week would provide that the time a majority of cutting is accomplished, four two-man teams would be on duty.

2. Weather conditions permitting, air surveillance would be accomplished 10 hours weekly divided into three days as situation dictates during the months of October through April, and only 3 hours weekly during the remaining months. This surveillance would be preceded by an aerial reconnaissance and photographing of affected East and West banks of the Canal Zone. This action is needed because the profile of the overall problem changes at a rapid rate.

3. The additional vehicles and boat would be used on a daily basis for transportation to any areas of deforestation.

VI. Conclusion.

A decision not to implement any of the alternatives or to delay implementation would result in a significant imbalance and degradation of the Canal Zone forested ecosystem.

BRIEFING FOR OFFICE OF TECHNOLOGY ASSESSMENT

CONGRESS OF THE UNITED STATES

AN OVERVIEW OF PAST, CURRENT AND PLANNED PROGRAMS AND TREATY RELATED ENVIRONMENTAL IMPACT

- ° DREDGING OPERATIONS
- ° OIL POLLUTION CONTROL
- ° AQUATIC WEED CONTROL
- ° MADDEN LAKE SILTATION

AUGUST 10, 1978
WASHINGTON, D.C.

Prepared and Presented by:
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1. INTORUDCTION:

TODAY I WILL PRESENT AN OVERVIEW OF FOUR OPERATIONAL FUNCTIONS WITHIN THE PANAMA CANAL COMPANY AND BRIEFLY DISCUSS TREATY RELATED CHANGES AS THEY MAY IMPACT ON THE ENVIRONMENT. SPECIFICALLY, I WILL DISCUSS DREDGING OPERATIONS, INCLUDING THE SILTATION OF MADDEN LAKE; OIL POLLUTION CONTROL; AND AQUATIC WEED AND DEBRIS CONTROL. IN ORDER TO FULLY APPRECIATE POTENTIAL TREATY RELATED
Fig. 1 ENVIRONMENTAL IMPACTS, I WILL DISCUSS WHY THESE MISSIONS EXIST, HOW THEY ARE MANAGED OPERATIONALLY, THE RESOURCE COMMITMENT, PERFORMANCE, FUTURE PLANS AND, FINALLY, THE POTENTIAL TREATY ENVIRONMENTAL IMPACTS.

2. DREDGING OPERATIONS:

Fig. 2 2.1 MISSION STATEMENT - DREDGING IN THE PANAMA CANAL REMAINS AS ESSENTIAL TO THE ONGOING MAINTENANCE AND IMPROVEMENTS TO THE CHANNELS, HARBORS, PIERS AND ANCHORAGES AS IT WAS DURING THE CONSTRUCTION OF THE WATERWAY. MAINTENANCE DREDGING IS REQUIRED TO REMOVE ACCUMULATIONS OF SILTATION FROM THE WATERWAY IN ORDER TO MAINTAIN THE OPERATIONAL DEPTHS REQUIRED FOR TRANSITING VESSELS. SIMILARLY, DREDGING IS REQUIRED TO REMOVE MATERIAL ENCROACHING THE CHANNELS DUE TO SLIDES FROM THE BANKS OF THE CANAL AND, FINALLY, MOST MAJOR CHANNEL IMPROVEMENT PROJECTS REQUIRE A SUBSTANTIAL DREDGING EFFORT.

2.2 METHODOLOGY

2.2.1 MAINTENANCE DREDGING REQUIREMENTS ARE BASED UPON HISTORICAL PERFORMANCE AND AN ONGOING HYDROGRAPHIC SURVEY MONITORING PROGRAM WHICH DETERMINES BOTTOM ELEVATIONS AND, THEREFORE, A MEASURE OF SEDIMENTATION. THIS DATA BASE IS USED TO PROGRAM SYSTEMATIC MAINTENANCE DREDGING OPERATIONS IN SPECIFIC LOCATIONS IN ORDER TO REMOVE ACCUMULATIONS OF SEDIMENT OR SHOALING BEFORE THEY RESTRICT WATERWAY USE FOR TRANSITING VESSELS OR PRESENT A SAFETY PROBLEM.

Fig. 3 MATERIAL WHICH MUST BE DREDGED IN ORDER TO MAINTAIN THE WATERWAY ENTERS FROM THREE PRIMARY SOURCES: SILTATION CARRIED INTO THE WATERWAY FROM ADJACENT WATERSHEDS, EROSION OF THE CANAL BANKS AND, FINALLY, BANK SLIDES. THE AGGREGATE OF THE TWO SOURCES - SILTATION AND BANK EROSION - IS MONITORED BY PERIODIC HYDROGRAPHIC SURVEYS IN THE CANAL OPERATING AREAS. ON THE BASIS OF THE SURVEYS AND PAST REQUIREMENTS
Fig. 4 A CYCLIC DREDGING PROGRAM HAS BEEN ESTABLISHED. CATASTROPHIC BANK FAILURE, OR SLIDES, ARE SIMILARLY MONITORED; HOWEVER, THEY ARE CONSIDERABLY LESS PREDICTABLE. THE BANK STABILITY SURVEILLANCE PROGRAM INSTRUMENTS SLOPES WHICH ARE CONSIDERED POTENTIAL SLIDES AND MEASURES FAILURE PLANES, WATER TABLE AND MOVEMENT. THE RESULTS OF THIS PROGRAM IDENTIFIES FEASIBLE PREVENTIVE MEASURES, PROBABILITY OF FAILURE, ESTIMATE

Fig. 5

OF QUANTITY AND ENCROACHMENT OF SLIDES AND WHEN THE SLIDE MIGHT OCCUR. SLIDES ARE THE GREATEST POTENTIAL THREAT TO A SERIOUS INTERRUPTION OF THE WATERWAY AND, THEREFORE, A PRIMARY CONSIDERATION FOR MAINTAINING AN IN-HOUSE DREDGING CAPABILITY FOR THEIR RAPID REMOVAL.

Fig. 6

ANOTHER REQUIREMENT FOR MAINTAINING A DREDGING CAPABILITY IS TO ACCOMPLISH MAJOR CANAL IMPROVEMENTS. THE IMPROVEMENTS ARE PRIMARILY CAPACITY RELATED AND ARE SUBJECTED TO CONSIDERABLE STUDY BEFORE THEY ARE FINALLY CONSIDERED FOR BUDGETARY APPROVAL AND IMPLEMENTATION. THIS DETERMINATION OF IMPROVEMENTS, PRIORITIZING VARIOUS PROJECTS, ANALYSIS OF THE ECONOMIES, ETC. IS THE FUNCTION OF THE CANAL IMPROVEMENTS STEERING COMMITTEE, WHO THEN RECOMMENDS ACTIONS TO THE PRESIDENT OF THE PANAMA CANAL COMPANY, WHO SEEKS FURTHER APPROVALS. SUCH PROJECTS ARE SCHEDULED ON THE BASIS OF AVAILABLE DREDGING CAPACITY AND FUNDING. THESE CONSTRUCTION PROJECTS ARE SCHEDULED FOR ACCOMPLISHMENT CONSISTENT WITH THE MAINTENANCE DREDGING REQUIREMENTS.

2.3 RESOURCES

TO MEET THE CANAL'S DREDGING REQUIREMENTS REQUIRES A SUBSTANTIAL COMMITMENT OF EQUIPMENT, MANPOWER AND FUNDS. THESE RESOURCES ARE CONSISTENT WITH THE MISSION AND PROVIDE FOR A FLEXIBILITY TO EFFECTIVELY RESPOND TO EITHER INCREASES OR DECREASES IN WORKLOAD.

2.3.1 MAJOR EQUIPMENT

THE PRIMARY PIECE OF EQUIPMENT PERFORMING MAINTENANCE DREDGING IS THE 28-INCH CUTTER SUCTION DREDGE MINDI. THE DREDGE DISLODGES THE MATERIAL ON THE CANAL BOTTOM WITH A ROTATING CUTTER, SUCKS THE MATERIAL UP THROUGH PUMPS AND THEN TRANSPORTS THE SLURRY TO DREDGED MATERIAL DISPOSAL SITES. THE MINDI WAS BUILT IN 1943 AS A STEAM POWERED DREDGE AND IS PRESENTLY BEING CONVERTED TO DIESEL ELECTRIC WITH AN IMPROVED PUMP CONFIGURATION.

MAINTENANCE DREDGING OF BULKY, HARD, MATERIAL NOT SUITABLE FOR SUCTION DREDGING, REMOVAL OF SLIDES AND MOST CONSTRUCTION DREDGING, REQUIRES A BUCKET DIPPER DREDGE. THE NEW 15-CUBIC YARD RIALTO M. CHRISTENSEN IS USED FOR THIS WORK. THE CHRIS, PROCURED IN LATE 1977, IS DIESEL ELECTRIC POWERED AND IS THE LARGEST DREDGE OF ITS TYPE IN THE WORLD. MATERIAL REMOVED FROM THE CANAL BY DIPPER DREDGE IS PLACED IN BOTTOM DUMPING SCOWS WHICH ARE THEN TRANSPORTED TO DISPOSAL AREAS OUTSIDE THE OPERATING CHANNELS.

MOST CONSTRUCTION DREDGING MUST BE PRECEDED BY A DRILL BARGE WHICH, USING EXPLOSIVES, FRACTURES THE HARD VIRGIN BOTTOM FORMATIONS INTO SUFFICIENTLY SMALL SIZES WHICH CAN BE REMOVED BY THE DIPPER DREDGE. THE DRILLBOAT THOR, A FOUR-TOWER, FOUR-SPUD, DIESEL/AIR POWERED DRILL BARGE, IS USED FOR THIS PURPOSE AGAIN, IT IS THE LARGEST OF ITS KIND IN THE WORLD.

THE FLOATING CRANE GOLIATH HAS, AS AN ANCILLARY FUNCTION, CLAMSHELL DREDGING. THIS CRANE IS EXTREMELY VERSATILE AND SERVES EFFICIENTLY AS A CLAMSHELL DREDGE FOR REMOVING SHOALS FROM THE CHANNEL, SPOT CONSTRUCTION DREDGING, SLIDE CLEARANCE DREDGING AS WELL AS SUPPORTING LOCKS MAINTENANCE REQUIREMENTS.

A FLEET OF PROPELLED EQUIPMENT, SUCH AS TUGS, DREDGE TENDERS, WORK BOATS, SURVEY LAUNCHES AND CREW LAUNCHES IS REQUIRED TO SUPPORT THESE DREDGING OPERATIONS AS WELL AS OTHER ASSIGNED MISSIONS.

2.3.2 MANPOWER

Fig. 7

THE MANPOWER USED TO OPERATE THE DREDGES AND DRILLBOAT AROUND THE CLOCK, YEAR AROUND, IS APPROXIMATELY 150 PEOPLE. THE DREDGES, WHICH OPERATE CONSECUTIVELY RATHER THAN CONCURRENTLY, USE THE SAME CREWS. THAT MEANS THAT WHEN THE SUCTION DREDGE IS OPERATING THE DIPPER DREDGE IS ESSENTIALLY NOT MANNED.

IN ADDITION TO THE PERSONNEL OPERATING THE DREDGES, 106 PEOPLE ARE REQUIRED TO OPERATE SUPPORT EQUIPMENT AND 45 MAINTENANCE PEOPLE ARE ASSOCIATED WITH RUNNING MAINTENANCE REQUIREMENTS. THEREFORE, A TOTAL OF 301 PERSONNEL ARE REQUIRED FOR DREDGING OPERATIONS.

2.3.3 COSTS

FY 78 DREDGING COSTS ARE BUDGETED AT $4.0. PAYROLL ACCOUNTS FOR $2.2, OR 55% OF TOTAL OPERATING

EXPENSE. SUPPLIES, FUEL AND DEPRECIATION MAKE UP THE DIFFERENCE. THIS EQUATES TO UNIT COSTS OF $2.75/CUBIC YARD FOR DIPPER DREDGING AND $0.86/CUBIC YARD FOR SUCTION DREDGING.

2.4 PERFORMANCE:

AS STATED EARLIER, DREDGING HAS BEEN VITAL TO THE
Fig. 8 CONSTRUCTION AND MAINTENANCE OF THE CANAL. THE TABLE SHOWS THAT CONTRIBUTION QUITE CLEARLY AND EMPHASIZES THE MAGNITUDE OF MAINTENANCE DREDGING. DURING THE FRENCH AND U.S. CONSTRUCTION EFFORTS, 134 MILLION CUBIC YARDS WAS REMOVED FROM THE WATERWAY BY DREDGING. THIS AMOUNTS TO OVER 40% OF THE TOTAL EXCAVATION. OVER 50%, OR 37.2 MILLION CUBIC YARDS OF THE MAJOR IMPROVEMENT OF WIDENING GAILLARD CUT WAS REMOVED BY DREDGING. HOWEVER, OF EQUAL IMPORTANCE IS THE FACT THAT 460 MILLION CUBIC YARDS HAS BEEN REMOVED BY MAINTENANCE DREDGING, OR NEARLY 4 TIMES THE AMOUNT DREDGED DURING CANAL CONSTRUCTION. SINCE THE PERIOD OF THE U.S. CANAL CONSTRUCTION, OVER 50 MILLION CUBIC YARDS HAVE BEEN DREDGED TO REMOVE SLIDES WHICH ENCROACHED THE CHANNEL - PRIMARILY IN GAILLARD CUT.

Fig. 9
Fig. 10 AS A MATTER OF INTEREST, THE CONSTRUCTION AND MAINTENANCE DREDGING EFFORT, EXPRESSED IN VOLUME (CUBIC YARDS), IS SHOWN FOR 1974 THROUGH 1978 AND THE PROJECTED DREDGING VOLUMES ARE SHOWN FOR 1979 AND 1980. THE ONLY IMPACT ON THE DREDGING OPERATIONS ENVISIONED BY THE TREATY IMPLEMENTATION IS THE

PROBABLE RELIEF OF MAINTENANCE DREDGING IN THE TERMINAL HARBORS AND PIERS. HOWEVER, IF PANAMA SO CHOSES, WE MAY PERFORM THIS DREDGING ON A COST REIMBURSABLE BASIS. THIS REQUIREMENT HAS NOT YET BEEN THE SUBJECT OF COORDINATION AND IS NOT CURRENTLY PLANNED OR BUDGETED FOR ACCOMPLISHMENT BY COMPANY FORCES.

IN SUMMARY, DREDGING OPERATIONS HAVE PLAYED A MAJOR ROLE IN THE CONSTRUCTION AND OPERATION OF THE WATERWAY AND WILL CONTINUE TO DO SO, RELATIVELY UNAFFECTED BY THE TREATY IMPLEMENTATION.

2.6 ENVIRONMENTAL CONSIDERATIONS:

DREDGING IS NORMALLY ASSOCIATED WITH MAJOR ENVIRONMENTAL CONCERN OR IMPACT. THIS HAS NOT BEEN, NOR IS IT EXPECTED TO BE, THE CASE IN THE CANAL OPERATION. SINCE THE ECOSYSTEM SURROUNDING THE CANAL WAS THE PRODUCT OF ONE OF MAN'S MAJOR CONSTRUCTION PROJECTS, IT IS A VIRTUAL INFANT IN REESTABLISHING A DYNAMIC BALANCED NATURAL ECOSYSTEM. FURTHERMORE, WITH THE ABSENCE OF INDUSTRIAL POLLUTION THERE IS VIRTUALLY NO PROBLEM ASSOCIATED WITH THE DISPOSAL OF DREDGED MATERIAL. SIMILARLY, SINCE THE CANAL WAS ESTABLISHED AS A PRIMARY SYSTEM WITH APPURTENANT SYSTEMS, DREDGED MATERIAL DISPOSAL AREAS WERE PROVIDED FROM THE OUTSET AND PRESENT NONE OF THE PROBLEMS ASSOCIATED WITH DISPOSAL IN THE URBANIZED OR INDUSTRIALIZED AREAS IN THE U.S. AND OTHER HIGHLY DEVELOPED NATIONS. STUDIES CONCLUDED ON BENTHIC

COMMUNITIES, ARCHAEOLOGICAL OR NATURAL RESOURCES, WATER QUALITY, ETC. HAVE CLEARLY INDICATED THAT NO MAJOR ENVIRONMENTAL IMPACT IS ASSOCIATED WITH THE DREDGING OPERATIONS.

2.7 TREATY IMPACT:

Fig. 11 AS STATED ABOVE, WITH THE EXCEPTION OF MAINTENANCE DREDGING OF THE HARBORS AND PORTS, THE TREATY HAS NO SIGNIFICANT IMPACT ON THE DREDGING OPERATIONS. ONE MIGHT SPECULATE ON POTENTIAL IMPACTS SUCH AS INCREASED SILTATION DUE TO THE CHANGE IN LAND USE IN ADJACENT WATERSHEDS; HOWEVER, NO FIRM DATA EXISTS TO QUANTIFY THIS EFFECT. THE WATERSHED HAS ALREADY SUSTAINED MAJOR CHANGES DURING THE PERIOD FOLLOWING CANAL CONSTRUCTION TO DATE AND WHILE IT IS REASONABLE TO EXPECT INCREASED SILTATION, THE SIGNIFICANCE OF SUCH SILTATION MUST HAVE BEEN RELATIVELY SMALL SINCE NO NOTICEABLE INCREASES IN SILTATION NOR DREDGING FREQUENCY HAS BEEN OBSERVED. ON THE OTHER HAND, BANK EROSION ASSOCIATED WITH LARGER VESSELS AND GREATER USE OF TOWBOATS HAS BEEN IDENTIFIED AS A PRIME CONTRIBUTOR TO THE SILTATION AND SHOALING OF THE CHANNELS.

THE LACK OF SIGNIFICANT INCREASES OF SEDIMENATION IN THE CANAL DUE TO EXTANT LAND USE CHANGES AND DEFORESTATION SEEM TO BE CORROBORATED BY THE RESULTS OF SEDIMENTATION STUDIES IN THE MADDEN RESERVOIR.

MADDEN LAKE IS A 19 SQUARE MILE, MAN-MADE RESERVOIR WHICH RESULTED FROM THE DAMMING OF THE CHAGRES RIVER IN THE EARLY 1930'S. THE LAKE LEVEL VARIES BETWEEN 190 FEET AND 252 FEET, COVERS 12,416 ACRES WHEN FULL AND PROVIDES A MAXIMUM USABLE STORAGE CAPACITY OF OVER 520 THOUSAND ACRE FEET. IT IS SUPPLIED BY A WATERSHED OF NEARLY 400 SQUARE MILES. THE LAKE/DAM SYSTEM IS USED TO PROVIDE THE FOLLOWING:

Fig. 12

° ADDITIONAL WATER STORAGE CAPACITY TO SUPPORT TRANSIT LOCKAGE WATER REQUIREMENTS

° GATUN LAKE LEVEL MANAGEMENT

° FLOOD CONTROL

° HYDROELECTRIC POWER GENERATION

° POTABLE RAW WATER FOR PANAMA

REDUCTION IN USABLE WATER CAPACITY OF THE MADDEN LAKE RESERVOIR DUE TO THE EFFECTS OF SILTATION WAS A CONSIDERATION FROM THE OUTSET AS WITH ANY DAM FACILITY. IN ORDER TO MONITOR SILTATION, PERIODIC SURVEYS USING STANDARD TOPOGRAPHIC AND HYDROGRAPHIC SURVEY TECHNIQUES HAVE BEEN EMPLOYED SINCE 1923. USING 1923-25 PRE-CONSTRUCTION TOPOGRAPHIC SURVEYS AS A BASELINE, SURVEYS HAVE BEEN RUN ON BASELINE CROSS-SECTIONS IN 1957, 1973, 1974, 1975 AND 1978. THE MOST RECENT SURVEY WAS COMPLETED IN JULY OF THIS YEAR. ALTHOUGH THE RESULTS OF THIS SURVEY HAVE NOT

BEEN FULLY ANALYZED, A PRELIMINARY ANALYSIS INDICATES THAT

° THERE HAS BEEN SHIFTING OF THE BOTTOM MASSES - A COMBINATION OF AGGREGATION AND DEGRADATION

° NO SIGNIFICANT SILTATION HAS OCCURRED OUTSIDE THE HIGHLY LOCALIZED TRIBUTARY DELTAS

° THERE HAS BEEN NO SIGNIFICANT REDUCTION IN THE USABLE WATER CAPACITY

THE DATA WILL BE ANALYZED IN GREATER DETAIL AND DEPTH WITH CORRELATION MADE TO PREVIOUS SURVEYS AND OTHER SILTATION ANALYSES; HOWEVER, INITIAL INDICATIONS HAVE LEAD OUR EXPERTS TO CONCLUDE THAT SILTATION IS NOT NOW A CRUCIAL PROBLEM AND THAT UNLESS ENORMOUS CHANGES IN THE WATERSHED OCCUR WITHOUT RESPONSIBLE PLANNING, THE LAKE WILL PERFORM ITS PRIMARY MISSION OF CANAL SUPPORT FOR THE FORESEEABLE FUTURE.

IF HEAVY INDUSTRY, URBANIZATION OR AGRICULTURAL ENTERPRISE DEVELOPS AT AN ACCELERATED RATE ON THE WATERSHEDS WITHOUT PROPER PLANNING OR REGULATION OF EMANANTS FROM THESE FACILITIES, ONE WOULD REASONABLY EXPECT INCREASES IN SILTATION, A DEGRADATION OF WATER QUALITY AND A CONCOMMITANT PROBLEM OF CONTAMINATED SEDIMENTS. THIS POSSIBILITY HAS FAR MORE POTENTIAL IMPACT IN OTHER AREAS THAN DREDGING, HOWEVER.

CURRENT AVAILABLE DREDGE MATERIAL DISPOSAL AREAS REMAIN WITHIN OR AVAILABLE TO CANAL OPERATING AREA AND HAVE A

PROJECTED LIFE AT LEAST TO THE YEAR 2000. IF, HOWEVER, THE PORTS AND HARBORS ARE DREDGED BY OTHER THAN THE COMMISSION, SUITABLE DISPOSAL AREAS MIGHT WELL PRESENT A PROBLEM.

3. OIL POLLUTION CONTROL:

3.1 MISSION STATEMENT

Fig. 14 THE PANAMA CANAL OIL POLLUTION CONTROL PROGRAM WAS
Fig. 15 ESTABLISHED IN ORDER TO INSURE COMPLIANCE WITH THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED. IN ACCORDANCE WITH THAT ACT, THE PROGRAM DEVELOPED A OIL AND HAZARDOUS MATERIALS POLLUTION CONTINGENCY PLAN; A SURVEILLANCE, PREVENTION AND ENFORCEMENT PROGRAM WITH THE COMPANY DELEGATED AS THE COAST GUARD ON-SCENE COORDINATOR, AND A ROUTINE AND CONTINGENCY SPILL RESPONSE SPILL CLEANUP CAPABILITY.

3.2 METHODOLOGY:

THE OIL POLLUTION CONTROL PROGRAM ADDRESSES IN ITS OPERATION PREVENTION OF OIL POLLUTION BY:

Fig. 16
- SOURCE IDENTIFICATION
- ROUTINE SURVEILLANCE OF POTENTIAL SOURCES
- FACILITY IMPROVEMENT PROGRAM
- FUEL HANDLING OPERATIONS IMPROVEMENT PROGRAM
- WASTE OIL COLLECTION AND DISPOSAL

Fig. 17 FURTHER, USING BOTH THE CRIMINAL PENALTY PROVISIONS OF TITLE 35 CODE OF FEDERAL REGULATIONS AND THE CIVIL PENALTY

PROVISIONS OF THE FWPCA WE HAVE ESTABLISHED AN AGGRESSIVE PROGRAM FOR THE PROSECUTION OF OIL SPILL VIOLATORS.

THE MAJOR SOURCES OF OIL POLLUTION ARE:

° OIL HANDLING PLANT FAILURES

° OIL HANDLING OPERATIONS FAILURES EITHER SHORE OR SHIP CAUSED

° MARINE ACCIDENTS

° IMPROPER DISPOSAL OF WASTE OILS

Fig. 18
Fig. 18a

ROUTINELY, THE TERMINAL PORTS OIL HANDLING OPERATIONS CONTRIBUTE THE BULK OF QUANTITY AND FREQUENCY OF OIL SPILLS, HOWEVER, MARINE ACCIDENTS HAVE THE FAR GREATEST POTENTIAL FOR CREATING A MAJOR SPILL. THIS LATTER FACT IS PARTICULARLY SIGNIFICANT SINCE PETROLEUM PRODUCTS ARE THE LARGEST COMMODITY GROUP TRANSITING THE CANAL. WITH THE SIGNIFICANT UPSURGE IN OIL TRANSITING FROM THE ALASKA NORTH SLOPE THIS POTENTIAL POLLUTION SOURCE IS GREATLY INCREASED.

A CANAL ZONE OIL AND HAZARDOUS MATERIALS CONTINGENCY PLAN WAS DEVELOPED AND FORMS A PART OF THE REGIONAL PLAN FOR THE ATLANTA REGION, IN ACCORDANCE WITH THE STATUTORY AND REGULATORY MANDATES OF THE FWPCA, AS AMENDED. THE PANAMA CANAL IS A MEMBER OF THE REGIONAL RESPONSE TEAM AND MAY CALL UPON THE COAST GUARD'S GULF STRIKE FORCE, ENVIRONMENTAL PROTECTION AGENCY, OR ANY OTHER REGIONAL RESOURCES UNDER THE JURISDICTION OF THE REGIONAL RESPONSE TEAM.

THE OIL POLLUTION CONTROL PROGRAM HAS A PERMANENT MINIMUM STAFF FOR ONGOING OPERATIONS AND IS AUGMENTED DURING CONTINGENCY RESPONSE. THE HARBORS AND CHANNELS HAVE A ROUTINE SPILL CLEANUP FORCE TO REMOVE ACCUMULATIONS OF OIL AND DEBRIS EMANATING FROM THE MARINE BUNKERING SYSTEM OR OPERATIONS OF SHIPS. THESE SAME PEOPLE PROVIDE A NUCLEUS FOR LARGER CONTINGENCY OIL SPILL RESPONSE.

3.3 RESOURCES

3.3.1 EQUIPMENT:

Fig. 19

SPECIALIZED EQUIPMENT IS REQUIRED TO SUPPORT THIS MISSION. FLOATING CONTAINMENT BOOMS, VACUUM UNITS, SKIMMERS, WATER CRAFT AND BARGES ARE SOME OF THE NECESSARY TOOLS TO MAINTAIN AN EFFECTIVE CLEAN-UP PROGRAM. THE EQUIPMENT IS PREPOSITIONED IN HIGH PROBABILITY SPILL AREAS AND CAN BE RELOCATED TO FOCUS ON SINGLE LARGE SPILLS.

A CAPITAL INVESTMENT OF APPROXIMATELY $625 THOUSAND HAS BEEN COMMITTED TO OIL SPILL CLEANUP EQUIPMENT.

3.3.2 MANPOWER:

THE PROGRAM IS MANNED WITH A TOTAL AVERAGE FORCE OF 15 PEOPLE. THIS INCLUDES THREE OIL POLLUTION CONTROL OFFICERS WHO ARE RESPONSIBLE FOR INSPECTIONS, INVESTIGATIONS, PROSECUTION AND SUPERVISION. THE REMAINING PEOPLE ARE INVOLVED WITH ACTUAL CLEANUP OR WASTE OIL COLLECTION OPERATIONS.

3.3.3 COSTS:

THE PROGRAM IS RELATIVELY INEXPENSIVE IN THE PERSPECTIVE OF ITS RESULTS. TOTAL FY 77 EXPENSES WERE $303k WITH $120k OR 40% BEING LABOR COSTS. IN FY 77 OVER $156k OR OVER 50% OF THESE EXPENSES WERE RECOVERED FROM SPILLERS WHETHER THEY BE OTHER COMPANY UNITS OR THIRD PARTY VIOLATORS. FURTHER, $21.6k IN CRIMINAL PENALTIES OR BAIL WAS COLLECTED AND $21.4k IN CIVIL PENALTIES WERE LEVIED BY THE COAST GUARD FROM OIL SPILL VIOLATIONS.

3.4 PERFORMANCE

3.4.1 CONTINGENCY PLANNING:

THE PANAMA CANAL OIL AND HAZARDOUS MATERIALS SPILL CONTINGENCY PLAN WAS DEVELOPED IN 1971 AND UP-DATED PERIODICALLY. IT IS AN INTEGRAL PORTION OF THE ATLANTA REGIONAL PLAN.

3.4.2 THE PANAMA CANAL COMPANY WAS DELEGATED AS ON-SCENE COORDINATOR BY THE SEVENTH COAST GUARD DISTRICT AND PERFORMS ALL COAST GUARD FUNCTIONS UNDER THE FWPCA EXCEPT THE ACTUAL LEVYING OF CIVIL PENALTIES. INVESTIGATIVE REPORTS ARE PREPARED AND RECOMMENDED PENALTIES FURNISHED TO THE COMMANDER, SEVENTH COAST GUARD DISTRICT.

3.4.3 PREVENTION/ENFORCEMENT TO REDUCE SPILLAGE OF OIL INTO CANAL WATERS IS BY FAR THE MOST COST EFFECTIVE

APPROACH. ACCORDINGLY, EMPHASIS HAS BEEN ON THE PREVENTIVE ASPECTS; e.g.:

° IDENTIFICATION OF POTENTIAL POLLUTION SOURCES

° INSPECTION OF POTENTIAL POLLUTION SOURCES (APPROXIMATELY 4 MAN-YEARS ANNUALLY)

° DEVELOPMENT OF A $1 MILLION ANNUAL FACILITY AND OPERATIONS IMPROVEMENT PROGRAM FOR OIL HANDLING OPERATIONS (1972 REPORT)

° PROSECUTION OF VIOLATORS

° COLLECTION OF WASTE OIL TO PREVENT POLLUTIVE DISPOSAL

I WILL BRIEFLY SHOW THE VARIOUS PERFORMANCE INDICATORS WHICH TRACK EFFECTIVENESS OF THIS PROGRAM.

Fig. 20 ° THE NUMBER OF CRIMINAL PROSECUTIONS HAS DECREASED
Fig. 21 DRAMATICALLY FROM ITS PEAK OF 90 IN 1971 AND 1975.

Fig. 22 ° OIL RECOVERED FROM CLEAN-UP OPERATIONS IN THE WATERWAY SHOWS THE SAME TREND WITH 4500 BARRELS (189,000 GALLONS) RECOVERED IN 1974 AND LESS THAN 500 BARRELS (21,000 GALLONS) IN FY 76 TO DATE.

Fig. 23 ° WASTE OIL COLLECTION IS AN EFFECTIVE PREVENTIVE PROGRAM. AN AVERAGE OF 14 THOUSAND BARRELS OF WASTE OIL HAS BEEN COLLECTED ANNUALLY SINCE 1974. THIS OIL WOULD OTHERWISE MOST LIKELY HAVE ENTERED THE WATER THROUGH IMPROPER DISPOSAL DOWN STORM DRAINS.

THESE PREVENTIVE MEASURES HAVE BEEN VERY EFFECTIVE. THE NUMBER OF SPILLS FROM VARIOUS SOURCES HAS SIGNIFICANTLY DECREASED AND CANAL WATERS ARE NOTICEABLY FREER OF OIL TODAY THAN AT ANY TIME IN THE PAST.

2.4.4 OIL SPILL RESPONSE

IN SPITE OF THE PREVENTIVE PROGRAM OIL
SPILLS DO OCCUR AND REQUIRE CLEANUP RESPONSE. CONTINGENCY
TYPE CLEANUP OPERATIONS ARE INFREQUENT BUT MUST BE RESPONDED
TO EXPEDITIOUSLY AND EFFECTIVELY TO MINIMIZE ADVERSE
Fig. 24 ENVIRONMENTAL IMPACT. A LISTING OF THESE CONTINGENCY
RESPONSE INCIDENTS IS SHOWN.

Fig. 25

3.5 ENVIRONMENTAL CONSIDERATIONS

THE EFFECT OF OIL POLLUTION IN THE ENVIRONMENT IS WELL KNOWN AND ITS IMPORTANCE HAS BEEN TESTIFIED TO IN THE PASSAGE OF STATUTES TO CONTROL AND REGULATE SUCH POLLUTION. THE PANAMA CANAL OIL POLLUTION PROGRAM IS IN ACCORDANCE THEREWITH AND SHOULD BE MAINTAINED AND PERHAPS AUGMENTED IN THE FUTURE.

EXTREME CARE MUST BE TAKEN TO INSURE THAT THE TREATY DOES NOT INADVERTENTLY LIMIT OUR EFFECTIVENESS IN CONTROLLING OIL POLLUTION. IN THIS REGARD, THE TREATY (ARTICLE III, PARA. 2c) AND THE AGREEMENT IN IMPLEMENTATION OF ARTICLE III OF THE TREATY (ARTICLE V, PARA. 6c) AND THE DRAFT IMPLEMENTING LEGISLATION PROVIDE A BASIS FOR FLUSHING OUT AN EFFECTIVE PROGRAM.

4. AQUATIC WEED AND DEBRIS CONTROL:

4.1 MISSION STATEMENT

Fig. 26 AQUATIC WEED INFESTATIONS AND DEBRIS HAVE BEEN A PROBLEM IN GATUN LAKE SINCE THE CANAL STARTED OPERATION. THE PANAMA CANAL AQUATIC WEED AND DEBRIS CONTROL PROGRAM IS CHARGED WITH PREVENTING ACCUMULATIONS OF AQUATIC WEEDS AND DEBRIS FROM DIRECTLY OR INDIRECTLY INTERFERING WITH TRANSIT OPERATIONS OR ESSENTIAL APPURTENANT FACILITIES SUCH AS POTABLE AND LOCKS WATER INTAKES, AIDS TO NAVIGATION, HEALTH AND SANITATION AND FLOOD CONTROL.

Fig. 27

4.2 METHODOLOGY

A MULTI-FACETED APPROACH IS USED TO ACCOMPLISH THIS MISSION. THE MAJOR BASIC ELEMENTS ARE:

° PHYSICAL BARRIERS TO PREVENT WEED AND DEBRIS INCURSIONS

° CHEMICAL AND BIOLOGICAL CONTROL OF WEED POPULATIONS

° MECHANICAL REMOVAL OF WEEDS AND DEBRIS BEFORE AND AFTER INCURSIONS

° RESEARCH TO DEVELOP IMPROVED METHODS.

THEREFORE, THIS COMPLEX MISSION IS ADDRESSED USING AN INTEGRATED CONTROL SYSTEM.

4.3 RESOURCES

4.3.1 EQUIPMENT

COMMITMENT OF EQUIPMENT RESOURCES FOR THIS MISSION HAS BEEN AND REMAINS RELATIVELY MODEST. PHYSICAL

BARRIERS TO PREVENT INCURSIONS OF WEEDS AND DEBRIS IS LIMITED TO THE USE OF FLOATING LOG BOOMS ON THE MAJOR TRIBUTARIES ENTERING GATUN LAKE. LESS THAN TEN SUCH INSTALLATIONS EXIST; HOWEVER, THESE INSTALLATIONS EFFECTIVELY INTERDICT THE MAJOR SOURCES.

CHEMICAL AND BIOLOGICAL CONTROL INVOLVES THE USE OF SMALL OUTBOARD BOATS (APPROXIMATELY 30), A SHALLOW DRAFT LAUNCH AND AN AIRBOAT.

MECHANICAL REMOVAL OF WEEDS AND DEBRIS INVOLVES THE USE OF A MAJOR INSTALLATION - A SLACKLINE DRAGLINE CABLEWAY LOCATED IN THE CHAGRES RIVER BEFORE IT ENTERS GATUN LAKE, A PORTABLE FLOATING WINCH BARGE WHICH REMOVES THE ACCUMULATED MATERIAL FROM BEHIND THE INTERDICTING CATCHMENT BOOMS, AND THE LABOR INTENSIVE MANUAL REMOVAL OF ISOLATED ACCUMULATIONS OF WEEDS AND DEBRIS FROM THE WATERWAY USING PITCHFORKS.

4.3.2 MANPOWER

A STABLE WORKFORCE OF APPROXIMATELY 30 PEOPLE IS USED FOR THIS MISSION. THIS NUCLEUS GROUP IS AUGMENTED DURING PEAK WORKLOAD PERIODS: e.g., FLOOD SEASON, BOOM MAINTENANCE PERIODS AND PERIODS OF INTENSE CHEMICAL CONTROL.

4.3.3 COSTS

THE COSTS ASSOCIATED WITH THIS MISSION ARE RELATIVELY MODEST AND AMOUNTED TO $350k IN FY 77. LABOR ($215k) AND COSTS OF HERBICIDES ($121k) MAKE UP THE BULK OF

THE EXPENSE. INCREASED RESEARCH COSTS IN FY 78 - 80, AMOUNTING TO APPROXIMATELY $300k ANNUALLY, ARE CONSIDERED COST BENEFICIAL SINCE THEY WILL HOPEFULLY LEAD TO IMPROVED AND LESS LABOR INTENSIVE CONTROL TECHNIQUES.

4.4 PERFORMANCE

PRODUCTION FIGURES FOR THE CHEMICAL AND MECHANICAL CONTROL EFFORTS FOR THE PAST FEW YEARS ARE SHOWN. CHEMICAL CONTROL INVOLVES THE USE OF HERBICIDES; NAMELY, GRANULAR COPPER SULFATE TO DESTROY THE PREDOMINANT SUBMERSED WEED, HYDRILLA; LIQUID 2,4-D AMINE SALTS TO DESTROY THE FLOATING AND ANCHORED HYACINTHS; AND DIQUAT TO CONTROL FLOATING PISTIA OR WATER LETTUCE.

Fig. 28 IN FY 77, 174 TONS OF GRANULAR COPPER SULFATE WAS USED TO TREAT NEARLY 5,000 ACRE FEET OF HYDRILLA. IT IS PROJECTED THAT 320 TONS OF COPPER SULFATE WILL BE USED IN FY 78.

Fig. 29 FY 77 USE OF 2,4-D WAS NEARLY 400 GALLONS TO TREAT OVER 300 ACRES OF FLOATING HYACINTH. FY 78 PROJECTIONS INDICATE AN INCREASE UP TO 700 GALLONS TO TREAT 350 ACRES OF HYACINTH.

Fig. 30 MECHANICAL CONTROL PRODUCTION FIGURES ARE SHOWN FOR THE CABLEWAY LOCATED ON THE CHAGRES RIVER, THE CABLEBOAT AND MANUAL REMOVAL. MECHANICAL REMOVAL OF WEEDS AND DEBRIS AMOUNTED TO 67 THOUSAND TONS IN FY 77. IN FY 78 THROUGH JUNE THIS AMOUNT HAS ALREADY BEEN HARVESTED. THE CABLEWAY OPERATION ACCOUNTS FOR OVER 50% OF THE TOTAL AMOUNT REMOVED; HOWEVER, A CONSIDERABLE QUANTITY, OR 25,000 TONS, WAS REMOVED

MANUALLY IN BOTH FY 77 AND 78 THROUGH JUNE. AS CAN BE SEEN, THE AMOUNT OF CHEMICAL AND MECHANICAL CONTROL IS SIGNIFICANT.

AN OPERATIONAL RESEARCH PROGRAM HAS BEEN REESTABLISHED WHICH TESTS THOSE TECHNIQUES AND EQUIPMENT WHICH HAVE PROVEN MERIT UNDER THE CORPS OF ENGINEERS' WATERWAYS EXPERIMENT STATION AQUATIC WEED RESEARCH PROGRAM. TO DATE, THE FOLLOWING FULL-SCALE OPERATIONAL TESTS ARE UNDERWAY:

° INTRODUCTION OF APPROXIMATELY 250,000 WEED EATING WHITE AMUR FOR THE CONTROL OF SUBMERSED AQUATIC WEEDS - PRIMARILY HYDRILLA

° INTRODUCTION OF THE SAMEODES MOTH TO CONTROL HYACINTHS

° INTRODUCTION OF THE HYACINTH BEETLE, *NEOCHETINA BRUCHI*

° USE OF SPECIAL SPRAY OUTFITTED AIRBOATS FOR HERBICIDE APPLICATION

° MECHANICAL HARVESTING AND REMOVAL OF HYDRILLA USING CUTTER BOAT, PUSHER BOATS AND PORTABLE FLOATING CONVEYORS

° USE OF EXPERIMENTAL CONTROLLED RELEASE HERBICIDES FOR CONTROL OF HYDRILLA

4.5 PLANS

WHILE CONTINUING ROUTINE TECHNIQUES, NEW METHODS, PROVEN EFFECTIVE IN FIELD RESEARCH EVALUATIONS, WILL BE

INTEGRATED INTO THE OPERATIONAL PROGRAMS. RESEARCH WILL CONTINUE TO FIELD TEST TECHNIQUES, HERBICIDES AND BIOLOGICAL CONTROL AGENTS WHICH HAVE SHOWN MERIT IN THE WES SCREENING PROGRAM.

4.6 ENVIRONMENTAL CONSIDERATIONS

THE PRIMARY PEST WEEDS IN CANAL WATERS ARE EXOTICS OR NON-NATIVE PLANTS WHICH PROLIFERATED TO PROBLEM PROPORTIONS IN THIS ECOSYSTEM. HYACINTH, NATIVE TO ARGENTINA, AND HYDRILLA, NATIVE TO PAKISTAN, ARE THE TWO PRIMARY PROBLEM PEST WEEDS. THE INTRODUCTION OF LARGE AMOUNTS OF HERBICIDES HAS BEEN MONITORED DURING THE COURSE OF AN INTENSIVE WATER QUALITY SURVEY AND WERE NOT FOUND TO HAVE RESULTED IN ANY LONG-TERM WATER OR BENTHIC DEGRADATION. THE USE OF HERBICIDES IS REPORTED ANNUALLY TO THE PRESIDENTIAL WORKING GROUP ON PEST MANAGEMENT WITHOUT ADVERSE COMMENT.

TREATY RELATED CHANGES AFFECTING THE AQUATIC WEED PROBLEM AND HAVING POTENTIAL ADVERSE IMPACT ARE AS FOLLOWS:

Fig. 31 ° INCREASED URBANIZATION, AGRICULTURAL AND INDUSTRIAL DEVELOPMENT ON ADJACENT WATERSHEDS CAN BE EXPECTED TO INCREASE NUTRIENT LEVELS IN THE LAKE; THEREBY INCREASING WEED PROLIFERATION AND QUANTITIES OF DEBRIS COMING INTO THE CANAL OPERATING AREA.

° INCREASED USE OF PESTICIDES ON ADJACENT WATERSHEDS CAN BE EXPECTED TO DEGRADE WATER QUALITY.

- MISSION STATEMENT
- METHODOLOGY
- RESOURCES
- PERFORMANCE
- TREATY RELATED ENVIRONMENTAL IMPACT

Fig. 1

- MAINTENANCE DREDGING TO KEEP REQUIRED DEPTHS IN
    - CHANNELS
    - HARBORS
    - PIERS
    - ANCHORAGES
- REMOVAL OF SLIDES
- CANAL CAPACITY CONSTRUCTION PROJECTS

Fig. 2

DREDGED MATERIAL SOURCES

- SILTATION
- BANK EROSION
- SLIDES

Fig. 3

MAINTENANCE DREDGING CYCLE

AREA	LAST DREDGED	SILTATION** RATE FT/YEAR	NEXT DREDGE
CRISTOBAL HARBOR & PIERS	1977	0.3	1982
ATLANTIC WEST ANCHORAGE	1970	0.7	1980*
ATLANTIC ENTRANCE-GATUN APPROACH	1977	0.4	1980
BOHIO-BUENA VISTA REACH	1975	0.1	1990
TABERNILLA, SAN PABLO, MAMEI	1975	0.2	1983
GAMBOA	1975	0.3	1980
MIRAFLORES LAKE	1971	0.1	1986
MIRAFLORES APPROACH	1976	0.8	1979
BALBOA REACH	1976	0.2	1984
BALBOA HARBOR & PIERS	1974	0.8	1979
PACIFIC ENTRANCE	1974	0.2	1981

NOTE: *OVERDUE
**DETERMINED BY HYDROGRAPHIC SURVEYS

Fig. 4

MAJOR CANAL IMPROVEMENTS - DREDGING

- Widen San Pablo-Tavernilla Reach (completed FY 77)
- Widen Gamboa Reach (Est. completion FY 79 - in progress)
- Deepen Gaillard Cut (Est. completion FY 86 - in progress)
- Widen Mamei Curve (Est. completion FY 80 - in progress)
- Widen Bohio Curve (In planning)

Fig. 6

DREDGING OPERATIONS
MANPOWER REQUIREMENTS

.DREDGES	150
..DIPPER DREDGE ..SUCTION DREDGE ..DRILL BOAT	
.SUPPORT	106
..TOWBOAT ..DREDGE TENDER ..5 WORK LAUNCHES	
.MAINTENANCE	45
..WELDERS ..MACHINISTS ..MECHANICS ..ELECTRICIANS ..SAND BLASTERS ..PAINTERS	

Fig. 7

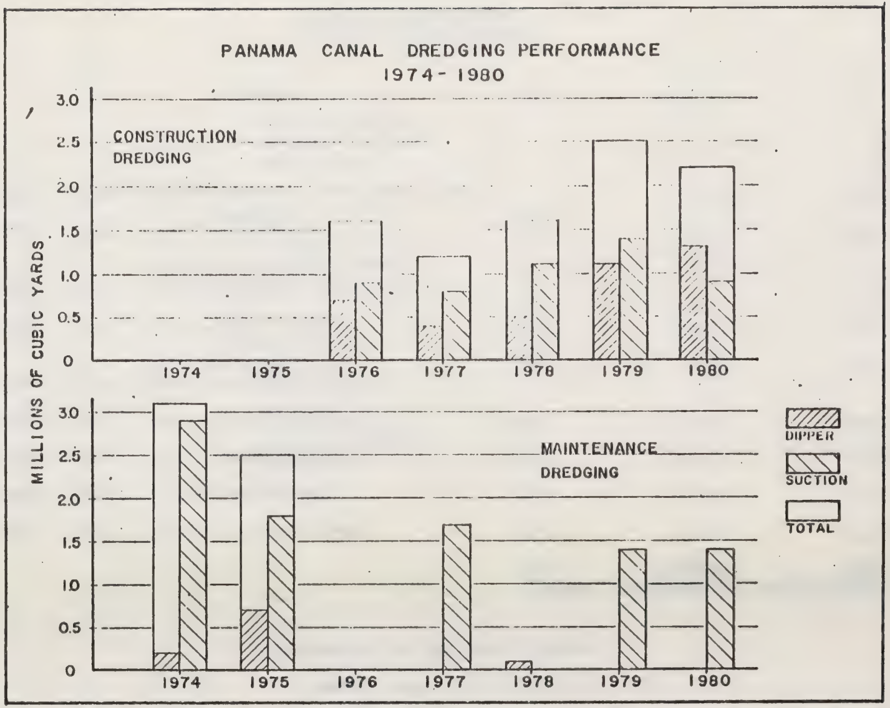
PANAMA CANAL EXCAVATION

CONSTRUCTION AND MAINTENANCE

		Volume (Millions of Cubic Yards)		
		Dry	Dredged	Total
1881 - 1903	French Construction	59.8	18.3	78.1
1904 - 1907	U.S.Construction	8.6	4.4	13.0
1908 - 1914	U.S. Construction	121.7	111.3	233.0
1881 - 1914	Total Construction	190.1	134.0	324.1
1918 - 1970	Gaillard Cut Widening Construction	13.5	37.2	50.7
1915 - 1978	Canal Maintenance	0.6	461.1	461.7
1971 - 1978	Construction - Channel Improvements	0.3	5.2	5.5
1881 - 1978	Total Excavation	204.5	637.5	842.0
1904 - 1978	Slide Removal (included above)		53.6	53.6

Fig. 8

B-62



PANAMA CANAL DREDGING PERFORMANCE
1974-1980

Fig. 9

PANAMA CANAL DREDGING PERFORMANCE
SUCTION & DIPPER DREDGING
1974 - 1980

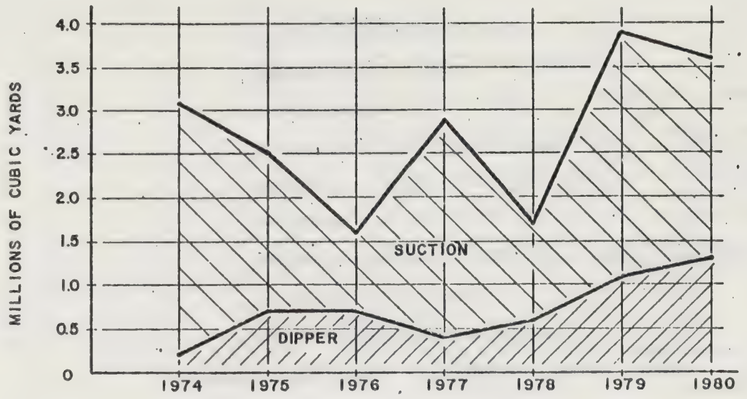


Fig. 10

oooo B-64

oooo B-65

oooo B-66

DREDGING OPERATIONS - POTENTIAL TREATY IMPACT

- DREDGING OF TERMINAL PORTS
- INCREASED SILTATION
- INCREASED CONTAMINATION OF DREDGED MATERIAL
- DISPOSAL SITES
- ADDITIONAL TRANSIT WATER CAPACITY
- GATUN LAKE LEVEL MANAGEMENT
- FLOOD CONTROL
- HYDROELECTRIC POWER
- POTABLE RAW WATER SOURCE

OIL POLLUTION CONTROL

Fig. 11

Fig. 12

Fig. 14

oooo B-67

oooo B-68

oooo B-69

PROVIDE PANAMA CANAL COMPANY COMPLIANCE WITH FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

PREVENTION

- SOURCE IDENTIFICATION
- SURVEILLANCE OF POTENTIAL SOURCES
- OIL HANDLING FACILITY IMPROVEMENTS
- OIL HANDLING OPERATING IMPROVEMENTS
- WASTE OIL COLLECTION AND DISPOSAL
- ENFORCEMENT

ENFORCEMENT

- CRIMINAL PROSECUTION OF VIOLATIONS OF 35 CFR
- CIVIL ASSESSMENT OF VIOLATIONS OF FWPCA
- COST OF CLEAN-UP

Fig. 15
Fig. 16
Fig. 17

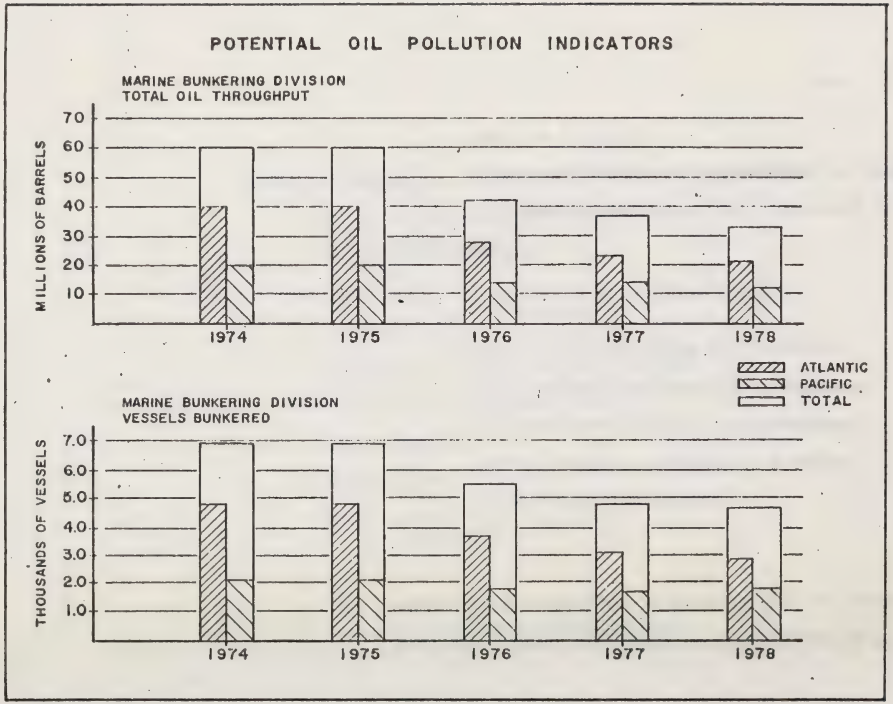
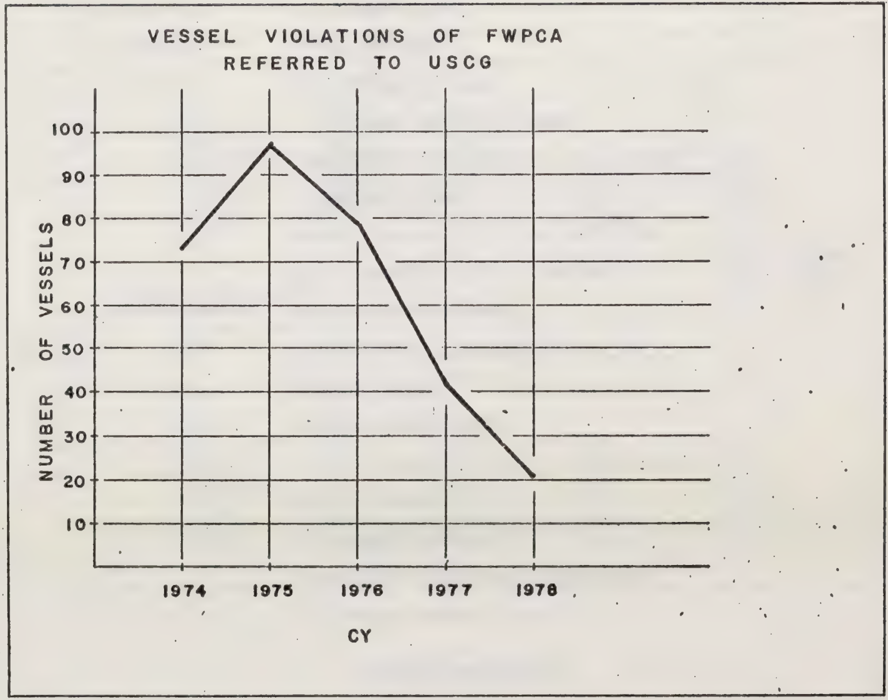

POTENTIAL OIL POLLUTION INDICATORS
MARINE BUNKERING DIVISION
TOTAL OIL THROUGHPUT
MILLIONS OF BARRELS
70
60
50
40
30
20
10
1974
1975
1976
1977
1978
ATLANTIC
PACIFIC
TOTAL
MARINE BUNKERING DIVISION
VESSELS BUNKERED
THOUSANDS OF VESSELS
7.0
6.0
5.0
4.0
3.0
2.0
1.0
1974
1975
1976
1977
1978

Fig. 18a

OIL POLLUTION EQUIPMENT

4	4,000 GALLON VACUUM TRAILERS
5	1,000 GALLON SKID-MOUNTED VACUUM UNITS
2	MANTA HEAD SKIMMERS
2	OELA II SKIMMERS
2	6 WHEEL TRAILERS (SKID VACUUM UNIT SUPPORT)
2	CLEANUP RECOVERY CRAFT
13	ALUMINUM PANGAS
2	BOSTON WHALER 16 FOOT WITH 70 H.P. OB
2	OIL MOPS WITH EQUIPMENT
1	HUSKY HYDRAULIC CRANE - 4 TON CAPACITY
5	CATAMARAN 26 FOOT WITH TWIN 50 H.P. OB
2	LISTER DIESEL PUMPS
2	SUBMERSIBLE PUMPS, ELECTRIC, 3" DISCHARGE
2	1,662 BARREL SLUDGE OIL BARGES
5,000 FT .	QUICK DEPLOY OIL BOOM
2,800 FT .	T AND T OIL BOOM
6,000 LBS.	OIL ABSORBENT FOAM

Fig. 19



VESSEL VIOLATIONS OF FWPCA
REFERRED TO USCG

Fig. 20

OIL POLLUTION CONTROL
NUMBER OF VESSELS ARRESTED
IN VIOLATION OF 35 CFR 125.1a

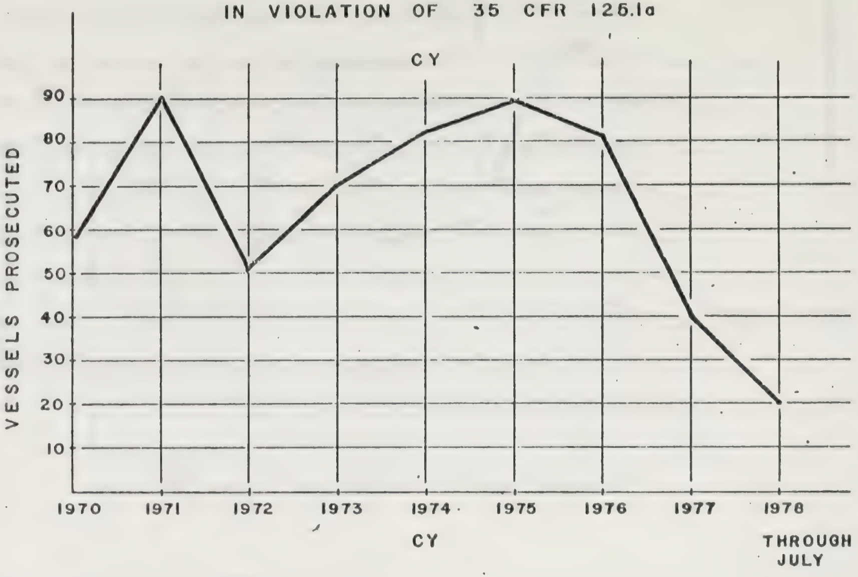


Fig. 21

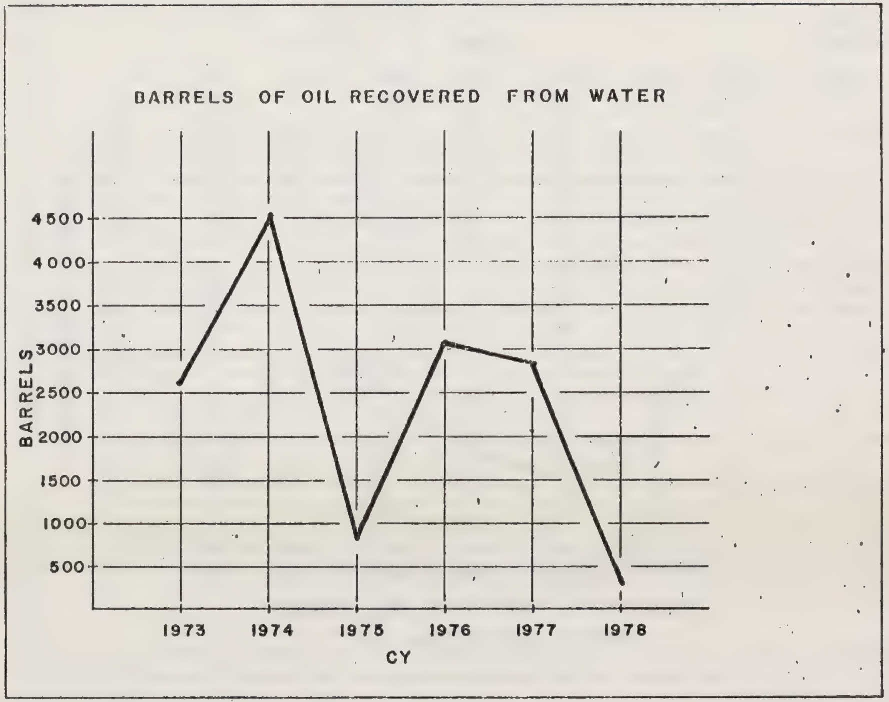

BARRELS OF OIL RECOVERED FROM WATER
BARRELS
4500
4000
3500
3000
2500
2000
1500
1000
500
1973
1974
1975
1976
1977
1978
CY

Fig. 22

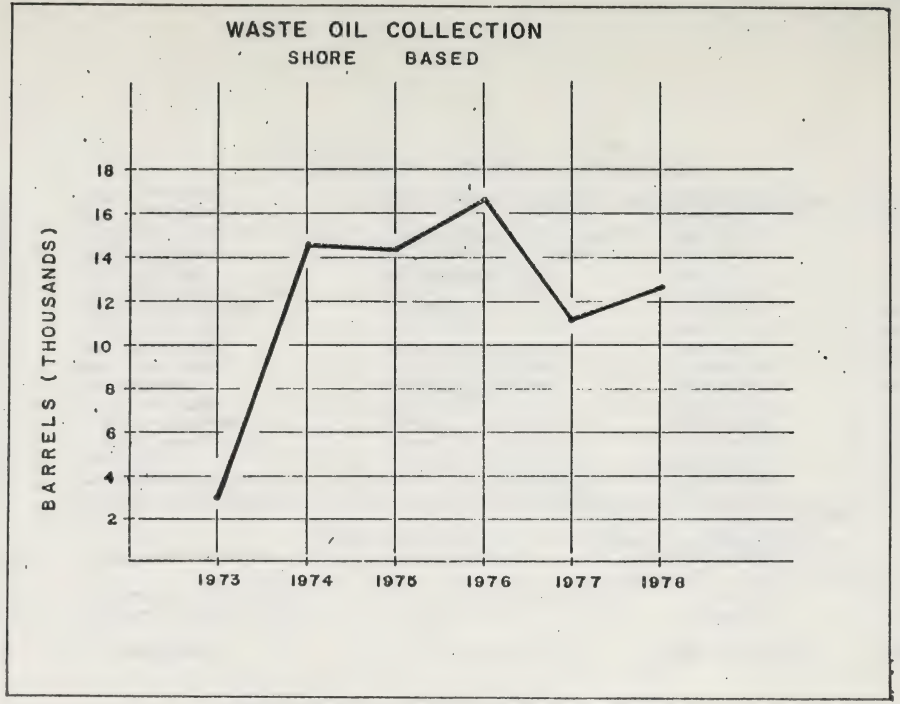

WASTE OIL COLLECTION
SHORE BASED
BARRELS (THOUSANDS)
18
16
14
12
10
8
6
4
2
1973
1974
1975
1976
1977
1978

Fig. 23

CONTINGENCY OIL SPILL RESPONSE INCIDENTS

DATE	INCIDENT	LOCATION	AMT. SPILLED	DURATION
10/70	Unknown source spill	Gaillard Cut	200 bbls.	5 days
11/70	Stranded fuel barge	Caribbean/Galeta Isl.	20 bbls. (1700 bbls. transferred)	15 days
12/70	SIAN YUNG sinking	Gaillard Cut	200 bbls. initially 2000 bbls. total	2 years
7/70	MV ZOE COLOCOTRONIS	Pier 16, Cristobal	300 bbls.	10 days
9/70	MV ANGELA VENIZELOS	Pier 16, Cristobal	150 bbls.	7 days
8/71	CHEVRON	East Diversion	476 bbls.	4 days
1/73	LINE 2 MBD	Pier 16, Cristobal	150 bbls.	6 days
3/73	Source unknown	Dock 7, Balboa	300 bbls.	12 days
7/73	10" Line MBD	Pier 18, Balboa	150 bbls.	8 days
9/73	TV CYGNUS	Dock 15, Balboa	500 bbls.	16 days
7/75	MBD Pipeline	Pier 18, Balboa	1700 bbls.	21 days
11/76	MBD Pipeline	Pier 18, Balboa	1200 bbls.	21 days
6/77	Navy Tank PD4	Navy Tank Farm	1000 bbls.	10 days
6/77	Faulty valve MBD	Industrial Division	300 bbls.	10 days
7/77	TV ARAVCANO NO. 53	Pier 1, Rodman	500 bbls.	5 days
11/77	GULF MARINE	Gulf Tank Farm	1500 bbls.	14 days
5/78	MBD Pipeline	Mt. Hope Tank Farm	425 bbls.	6 days
5/78	Tank 143 Electrical Divn.	Miraflores Power Plant	100 bbls.	9 days
7/78	MBD Pipeline	Pier 16, Cristobal	1200 bbls.	14 days
7/78	MBD Pipeline	Pier 16, Cristobal	100 bbls.	6 days

Fig. 24

OIL POLLUTION - POTENTIAL TREATY IMPACT

° MAJOR OIL SPILL SOURCE TRANSFERS TO PANAMA

° LOSS OF REGULATORY AUTHORITY TO

  °° INSPECT

  °° CORRECT

  °° INVESTIGATE

  °° ENFORCE

  °° CLEAN-UP

° NO EXISTING POLLUTION LAWS IN PANAMA

° NO PROVISION FOR REIMBURSEMENT FOR CLEAN-UP

° NO CERTIFICATES OF FINANCIAL RESPONSIBILITY

Fig. 25

oooo

- MAINTAIN CANAL FREE OF FLOATING OBSTRUCTIONS
- PREVENT DAMAGE TO SHIPS PLANT
- PROTECT WATER INTAKES
- MAINTAIN WATER ACCESS TO SUPPORT FACILITIES
- CONTROL DISEASE CARRYING INSECT HABITATS

Fig. 26

PREVENT INCURSIONS INTO WATERWAY

CHEMICAL AND BIOLOGICAL CONTROL OF WEED POPULATIONS

MECHANICAL REMOVAL

RESEARCH IMPROVED METHODS

Fig. 27

B-80

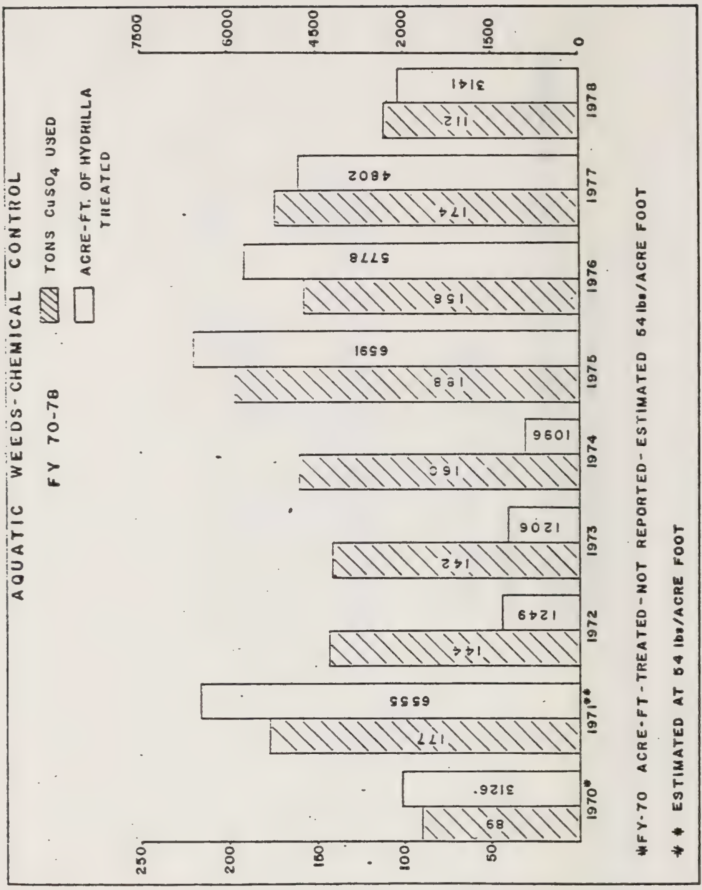

AQUATIC WEEDS-CHEMICAL CONTROL
FY 70-78
▨ TONS CuSO$_4$ USED
☐ ACRE-FT. OF HYDRILLA TREATED
250
200
150
100
50
7500
6000
4500
2000
1500
0
1970*
89
3126*
1971**
177
6555
1972
144
1249
1973
142
1206
1974
160
1096
1975
198
6651
1976
158
5778
1977
174
4802
1978
112
3141
*FY-70 ACRE-FT-TREATED-NOT REPORTED-ESTIMATED 54 lbs/ACRE FOOT
** ESTIMATED AT 54 lbs/ACRE FOOT

Fig. 28

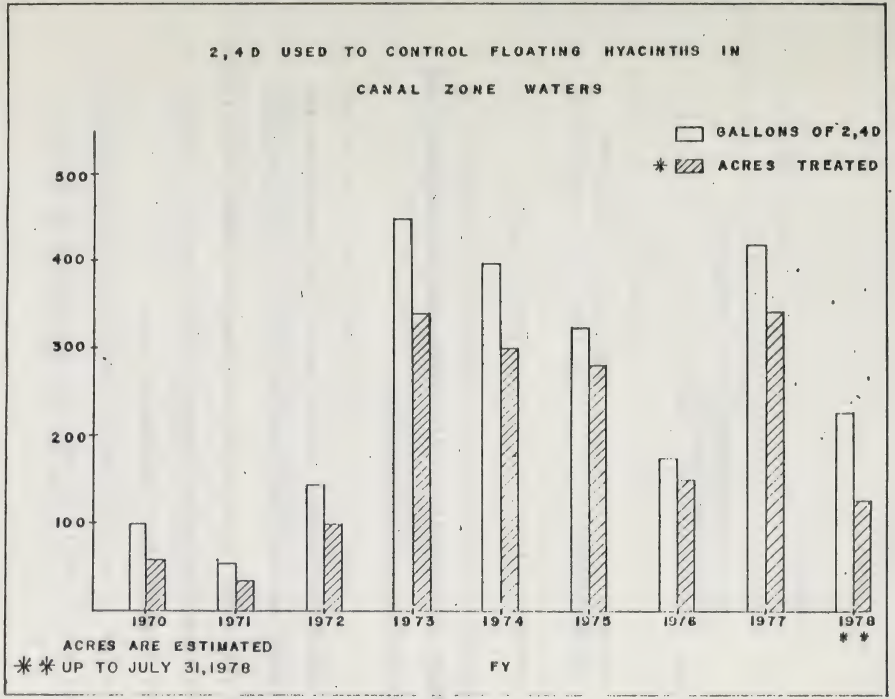

2,4D USED TO CONTROL FLOATING HYACINTHS IN
CANAL ZONE WATERS
GALLONS OF 2,4D
* ACRES TREATED
500
400
300
200
100
1970
1971
1972
1973
1974
1975
1976
1977
1978
**
* ACRES ARE ESTIMATED
** UP TO JULY 31,1978
FY

Fig. 29

APPENDIX C

RELEVANT ENVIRONMENTAL LAWS, REGULATIONS, POLICIES AND COMMITTEES

Relevant Environmental Laws, Regulations, Policies, And Committees

(prepared by Frank Morris, Panama Canal Company)

A. Federal Environmental Quality Control Laws And Regulations That Are Applicable in The Canal Zone:

The Federal Environmental Quality Control Laws, Regulations and Executive Orders that have been issued to reduce adverse environmental impacts on the quality of the natural and human environment can be grouped into several categories such as national policy, water, air, wildlife, solid waste, noise and other environmental laws.

Only a few of the U.S. Pollution Control Statutes are applicable to the Canal Zone (table II-I). These policies and controls follow:

1. National Environmental Policy Act of 1969 (NEPA) (PL-91-190); 1970.

2. Occupational Safety and Health Act (OSHA), (Where it regulates the environment) of 1970 (PL-91-596).

3. Clean Air Act of 1970 (PL-91-604), (Subchapter II - Emission Standards for moving sources and amendments) as amended.

4. Federal Water Pollution Control Act Amendments of 1972 (PL-92-500).

    a. Section 311 - Discharge of Oil and Hazardous Substance.

    b. Section 312 - Marine Sanitation Devices.

5. Marine Mammal Protection Act of 1972 (PL-92-522).

6. Marine Protection, Research, and Sanctuaries Act of 1972 (PL-92-532) (Ocean Dumping Act).

7. Noise Control Act of 1972 (PL-92-574), Section 4.

8. Endangered Species Act of 1973 (PL-93-205).

9. Safe Drinking Water Act of 1974 (PL-93-523).

10. Toxic Substances Control Act of 1976 (PL-94-469).

11. Solid Waste Disposal Act (as amended by Resource Conservation and Recovery Act of 1976; PL-96-580).

B. Executive Orders:

1. Executive Order 11507, "Prevention, Control, and Abatement of Air and Water Pollution at Federal Facilities" February 4, 1970.

2. Executive Order 11514, "Protection and Enhancement of Environmental Quality", March 7, 1970 (35 FR 46, 4247 (1970)).

3. Executive Order 11752, "Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities" December 17, 1973.

To comply with the U.S. Environmental Legislation, the Canal Zone has to be specifically included in the definition of the "United States" or the term "State" or by defining the geographical applicability to the Canal Zone, or the statutes requires all Federal agencies to comply with the Act.

a. NEPA requires all Federal agencies to consider environmental factors and prepare environmental impact statements.

b. FWPCA specifically include the Canal Zone in the definition of the United States.

c. In the Toxic Substances Control Act: The Canal Zone is included in the definition of the term "State".

d. The Marine Mammal Protection Act includes the Canal Zone by definition.

e. The Clean Air Act Amendments of 1970 and as amended in 1977, did not include the Canal Zone in any of the above categories.

C. Canal Zone Laws and Policies that Apply to the Local Environment:

The Canal Zone has also issued rules and regulations for environmental protection and enhancement (Code of Federal Regulations, Title 35, Chapter 1) and established procedures to comply with NEPA. (See Table II-2). These rules, regulations and policies are listed below:

1. Establishment of Procedures to comply with the National Environmental Policy Act, Federal Register, Vol. 41, No. 86, May 3, 1976.

2. Code of Federal Regulations (CFR), Title 35, Chapter I - Canal Zone Regulations, 1977.

a. Part 61 - Health, Sanitation, and Quarantine (includes controls on use of pesticides, herbicides, insecticides and rodenticides).

b. Part 103.21 - Precautions against emission of sparks, smoke or noxious gases; etc. from vessels.

c. Part 103.22 - Vessels at Fuel Berths.

d. Part 113 - Hazardous Cargoes.

Subpart B - Handling, Loading and Unloading of Explosives.

Subpart C - Hazardous Liquid Cargoes

Subpart D - Other Hazardous Materials

e. Part 125 - Sanitary Requirements: Vessel Wastes, Garbage.Ballast.

D. Canal Zone Administration and Regulations (CSAR):

1. Chapter 5, Part 167.111 - Vehicles Transporting Explosives,

Flammable Liquids, and Liquified Petroleum Gases.

2. Chapter 5, Part 107.85 - Mufflers; Prevention of Noise.

3. Chapter 5, Part 169 - Subpart B - Protection of Wildlife.

TABLE II-3

Committees Charged with Coordination and Control of Environmental Affairs

I. Environmental Quality Committee, Panama Canal Company/Canal

Zone Government:

Lieutenant Governor, Chairman

Director, Executive Planning Staff

Engineering and Construction Director

Health Director

Supply and Community Service Director

General Counsel

Environmental Officer, Executive Planning Staff, Secretary

II. Interagency Environmental Committee:

Panama Canal Company/Canal Zone Government Representatives:

Engineering and Construction Director, Chairman

Environmental Officer, Executive Planning Staff

APPENDIX D

LETTERS FROM PARTICIPANTS

THE UNIVERSITY OF TEXAS AT AUSTIN
CENTER FOR RESEARCH IN WATER RESOURCES

10100 Burnet Rd.
Austin, Texas 78758
512 : 836-0440

August 14, 1978

Mr. Bennett L. Silverstein
Project Director
Congress of the United States
Office of Technology Assessment
Washington, D.C. 20510

Dear Ben:

I want you to know that the meeting Thursday and Friday was very informative to me and well planned and executed. In response to Pete's request, I have the following comments.

It appears to me that the scope of Panel and Joint Commission activities can be restricted to the Treaty language of environmental effects of the Treaty, which might be negligible if the Treaty doesn't result in practices that would not have taken place anyway. It can be expanded to include all effects on Canal operation, which might be justified under Section 13. Lastly, it might expand to effects on all of Panama, which might be difficult to justify under the terms of the Treaty. My comments will be based on the second of these.

One more preliminary comment is in reference to selection of Commission members. The main concern at the meeting was, I guess naturally, that the members be environmentalists or environment-oriented. I believe that it is more important that they be moderates or common-sense oriented. It is essential to obtain Panama's concurrence on many or most operations, and extreme recommendations will be doomed to failure either through non-acceptance or eventual disillusionment.

Just from my general experience and modest knowledge of Canal facilities, it is my judgment that deforestation will not decrease (but might increase) the Canal's water supply and have only a minor, if not trivial, effect on dredging requirements. A re-appraisal 10 years from now might give a different indication. In view of the concern of others in this regard, I believe that any documentary evidence to the contrary should be made available to the Panel.

As stated at the meeting, any recommendation that the Panel makes regarding deforestation should, in my opinion, be in regard to watershed management generally, not simply reforestation. In this connection, services of the U.S. Soil Conservation Service would be invaluable. In my view, the objective should be best land use consistent with a desirable environment (from Panama's standpoint) and consistent with efficient Canal operations.

I was surprised to note that the EIS was not commented on by either of the two U.S. agencies that are perhaps most qualified from a technical standpoint --

D-2

Mr. Bennett Silverstein
August 14, 1978
Page Two

the Corps of Engineers and the Soil Conservation Service. I would hope that the expertise of these two agencies would be welcomed. There is a popular tendency to rule out the most expert on the basis that they might be biased. In my experience, this practice has had none but bad consequences.

I would guess and hope that any further Panel business can be handled by mail (although I gained much from this one meeting).

It has been a pleasure. Please let me know if I can be of any assistance.

Sincerely,

Leo R. Beard

Leo R. Beard
Director

dsk

D-3

REPORT TO THE OFFICE OF TECHNOLOGY ASSESSMENT

Potential Environmental Problems Affecting the Panama Canal

(by Paul Campanella, JRB Associates Inc.)

This report has several objectives. It broadly discusses from the point of view of an environmental manager who has 6 years experience working in Panama, a few of the social, economic and political factors affecting the Canal Watershed and, in doing this, it provides a framework for consideration of the policy issues. Secondly, it develops, in rather summary fashion, some of the explicit ecological impacts to the watershed resulting from uncontrolled development. Finally, it offers some comments on the structure, function, and role of the proposed Joint Commission on the Environment.

1. Social, Political, and Economic Framework of the Watershed

The settlement pattern of the watershed is dominated by the Panama City - Colon Metropolitan areas and the urban settlements adjacent to or located along the highway corridor between the two urban centers.

Much of the commercial activity of the watershed has developed in response to urban needs and the watershed acts as a source of unskilled labor and as a sink for ranching, farming, home building and some commercial investment. A growing numbers of city dwellers use the rivers, lakes and forested areas for weekend recreation.

In the last 20 years the population has increased rapidly. The annual effective rate of increase (natural increase plus migration) in the watershed, as calculated by Panama's planning office, is 5.37%. According to those same sources, the density increased form 14 per Km^2 in 1960 to 23 per Km^2 in 1970. Assuming that the effective rates of increase remain constant, the population is expected to increase by 37% over the next 5 years. This figure is deceptive in the sense that the environmental pressures are not applied uniformly over the watershed. The migratory process and impact varies according to the region. Some areas, like Cerro Cama are being advanced because of accelerated habitat destruction: a complex process resulting from multiple land use by agriculturists and cattlemen.

The impact of the transmigratory process is evident in the wave of deforestation advancing rapidly toward the forested areas of the Canal Zone and from the shores of Lake Alajuela toward the mountains. The fact that areas are being abandoned by people does not mean that the land will revert to its former state. Rather, the contrary is expected. Without significant inputs of time and energy the land will remain unproductive and will thus force conversion of still more land to meet accelerating national demands.

Whatever the reason for the rapid urbanization that is taking place, there can be no question that the human environment created by the process is a phenomenon of ever-increasing importance. The contemporary urban environment requires a much larger supply of energy, materials and space per person than it did 10 years ago. The accelerating needs and demands result in further pressures to increase production, expand communication, transportation and social service networks and increase physical structures.

The problems generated by rapid growth are aggravated by severe economic problems. Panama's economy was hard hit by spiraling inflation and the world wide recession in 1974 and 1975. After registering average annual 8% real growth from 1969 to 1974 the rate fell to about 2.6% in 1974 and to less than 2% in 1975-1977. Prospects for 1978 are about the same as those experienced in recent years. Some gains have been made in reducing inflation and the cost of living increase is being held to about 11% annually. However, unemployment in the watershed is unoffically reported to be around 30%.

The Government's development planning through 1980 stresses industrial and agricultural and the development of outlying areas of the country. The plan bases its optimistic projections on taking full advantage of the country's natural resources. There is great interest in the consolidation of agricultural potential with special emphasis on the development of hardwood and softwood reserves. Priority has also been assigned to substitution of food imports, i.e., vegetable oils, milk and dairy products, processed meat, as well as to development of food crop exports: To further complicate the development picture, the areas that have been recently colonized are not well suited for agricultural development, and have poor access to the social and cultural benefits provided by the government.

The present growth rate in the watershed indicates that the pollution impact from non-industrial man-related use will double in 12 years. This means similar expansion in the demand for sanitation and domestic water supplies. Because of the increasing sophistication of the rural dweller, domestic wastewater contains numerous chemicals and toxic substances (for example detergents are widely used in Panama) not found in ordinary household sewage ten years ago. In addition, water may contain a greater number of pathogens than ever before. Industrial development, although still on a small scale, has created new pollution problems that Panama is not prepared to deal with.

The technology for water purification is available but with increasing multiple use of the land the inputs are complex and the resultant processing of wastewater becomes a costly and complicated affair with numerous chemical and physical steps to remove pollutants. The question of removing pathogens becomes very important since it is well established that the conventional treatment of wastewater, even when employing both biological and chemical treatment, does not guarantee water free from microorganisms.

The problems of providing adequate supplies of good quality water are already seriously taxin IDAAN. Future levels of water quality degradation will increase as the economy grows. Soil conditions are extremely variable in absorption capacity and thus strict norms must be established for use of individual or community septic tanks. Because of prohibitively high costs of constructing and operating sewage treatment facilities and due to the lack of a pollution inspection and reporting network, stream dilution is still the primary method of waste disposal.

It is envisaged that these problems will become rapidly worse as pollution destroys available water sources and natural self-purification systems are overloaded.

The limited development of Panama's natural resources has occurred on a small scale and in an uncontrolled manner. The major exception is the large-scale past and present conversion of forested ecosystems to agriculture and pasture land through traditional shifting agricultural techniques. The utilization of other natural resources like minerals and water has been limited. Consequently, the occurrence of significant degradation and major imbalances in the country's ecosystems has been minimized. However, the current scale of thinking and approaches to development of the natural resource base raises some questions about potential conflicting interests between long-range conservation of the environment and short range development objectives. Concern for Panama's long-term economic development and environmental quality are raised for the following reasons:

1) Past and present development actions have been in response to immediate short term needs without due consideration for long term cumulative costs or benefits. There is no mechanism in the planning process to call attention to the potential impacts of development and more important to determine how much environmental protection Panama can afford consistent with the interdependent goals for other competing social concerns.

2) Few protective measures have been instituted to mitigate and to monitor the potential adverse effects of development activities nor are there means to

enforce the existing laws and executive orders.

3) The overlapping of administrative responsibilities in the areas of resource planning and economic development, land use, public services and environmental protection among ministries and semi-autonomous agencies has resulted in neglect, misuse and loss of the country's natural resources.

It would be unfair to say there is no awareness among planning officials of the significance of man's impact on the environment. However, such awareness is confined to a small fraction of the policy making community and it is clear that this level of awareness has not been suficient to generate a serious commitment to include concern for the human environment in the planning, design and implementation processes. Additionally, once a constituency supporting attempts to correct major environmental deficiencies is developed it will have to compete for already scarce public sector funds.

Utilization of watershed land can be grouped into a number of categories: Agriculture, grazing, forestry, industry, urban development, transportation, recreation, and tourism. Each of these activities uses the environment differently, requiring certain inputs and resulting in specific outputs which are in turn linked to other systems. While our knowledge of some of man's impact is growing we are still without site specific information as to how these impacts translate into long term effects. Our ignorance is even more pronounced in tropical ecosystems. For this reason I focus on the major problems and my approach, while not exhaustive, is to point out some of the potential adverse ecological effects that result from development activities in the tropics.

2. ECOLOGICAL EFFECTS

2.1. Introduction

Both the severity and form of ecological impacts depend on the kind of development activity and the type of ecosystem in which it is deployed. For example, industrial and agricultural uses differ in their land, water, and socio-economic impacts, and sites differ in their climate, topography, soils, and plant and animal communities. The ecological impacts that result from unrestricted development are difficult to describe in quantitative terms; however, it is possible to identify technological factors associated with development and site-specific factors that cause impacts to vary and to describe those variations qualitatively.

2.2. Variation by Development Activity

Several factors that vary among development activities can have major effects on the severity of impacts on ecosystems: land use, human impacts during both the construction and operation phases, water requirements of the activity and other induced in-stream flow changes, effluents, and air emissions associated with the development.

- Land Use. First-order, direct ecological impacts are caused by land disturbances at the development site. These disturbances result in the complete removal of vegetation and animals dependent on this vegetation. Two distinct destructive processes will continue within the watershed: (1) the total area occupied by natural habitats and by species adversely affected by man is shrinking, and (2) formerly continuous natural habitats and distributional ranges are being fragmented. In addition to reducing the carrying capacity of the land for animal populations, fragmentation may further reduce animal populations that range or migrate over large areas. In combination, these processes may increase the chance of species extinction through random events because the remaining areas are cut off from possible outside emigration and have no effective dispersal corridors. Increased erosion will speed removal of nutrients from affected areas within ecosystems. Thus, where nutrients already limit vegetation growth, increased erosion will further reduce both growth and carrying capacity for animals. Many species of plants and animals that have potential value as future food sources, as sources of structural materials, fiber, and chemicals for industry or medicine, may be lost.

Generally, the amount of land disturbed directly by any one type of activity is small in comparison to the land area of the entire country or in comparison to the total amount of habitat of that type in a region. Thus, the impacts resulting from direct land use generally occur only locally; they have regional importance only when the particular ecosystem type disturbed is rare or supports endangered species. For example, 80-150-year-old lowland deciduous forests are rare in Panama as compared to lowland evergreen forests. Eliminating 20 percent of this type of forest in a location has vastly greater impacts than eliminating 20 percent of a more common community type. Similarly, eliminating ocelot habitat (an endangered species) has different implications than eliminating while tail deer habitat.

At the aggregate level, as many development activities are sited in one location, direct land use will eliminate or affect a large percentage of habitat types and result in significant reductions in carrying capacity. Entire population of animal species such as spotted cats could be eliminated in these locations, and their overall range will be reduced.

- Human Impacts. If no attempts are made to enforce zoning or land use guidelines, impacts caused by people will likely be more severe than those caused by industrial or commercial related land use. In addition to the direct contribution of increased population to air and water pollution, land requirements will increase to meet their housing, transportation, and service needs; and recreational activities will increase.

  The type of ecological impacts that result from population increases are similar to those caused by land use for industrial or residential development. More housing, roads, and service activities fragment habitat into smaller parcels that are less usable by either resident or migratory species. Easier access to recreational areas often results in increased hunting, some of which is illegal. Increased recreational use can also result in increased erosion, damage to vegetation, degradation of aquatic habitat, and disturbances to terrestrial wildlife.

- Water Requirements and Aquifer Interruptions. The most pervasive ecological changes resulting from uncontrolled development will occur in those streams and rivers that experience severe fluctuations in flow resulting from increased runoff, stream impoundment, and consumptive water use, and which are affected by increased siltation.

  The impacts caused by flow variations vary seasonally. Normal flows in the wet season will be sufficient for fish migration and spawning; lower flows during the dry season will reduce habitat and lower water quality, thereby interfering with the growth and survival of some fishes. Sudden high flows and flooding during the dry season can cause severe scouring, thereby reducing the population of aquatic invertebrates that support fish. Increased sediment load adds nutrients absorbed on sediment particles to the aquatic system and accelerates the movement of water containing fertilizers and pesticides into streams and lakes. Alterations in stream hydrology, channel morphology, water chemistry and sediment loads caused by extensive land clearing can in turn produce changes in aquatic biology. For example, reduction of light penetration due to sedimentation can be considerable, and the consequent inhibition of photosynthesis will result in less abundant food for fish. Sediment deposited on stream bottoms covering spawning beds reduces the survival rate of eggs and young and reduce available food by killing many bottom living organisms. Flow reductions narrow the margin of marshlike habitat which parallels many streams. This riparian habitat supports large and diverse communities of mammals, insects and birds. Since riparian habitat is particularly scarce in the watershed, any reduction consititutes a large percentage lost in its availability.

- Wastewater Effluent. Both the quantity and content of the effluent varies by development activity. In general, increased populations will result in increased levels of residential sewage discharged into streams or percolating into the ground water. Effluents resulting from industrial development are potentially much more damaging to the ecology. In certain industries heavy metals are a serious problem. Heavy metal contamination constitutes an addition of minerals to the mineral cycles of the stream ecosystems where they are cycled in and through the food webs. In most cases, the waste elements are foreign to the system. Both aquatic plants and animals have low tolerance to heavy metals. Also, where water is used for drinking and/or fish taken from the streams are eaten by people, contamination carries with it potential health hazards. The extent to which contamination and food web uptake is likely to occur is largely a matter of speculation at this time. However, since there is only a very general series of laws dealing with water pollution and there is no enforcement agency concerned with controlling pollution the trend to increased water degradation will probably continue.

- Air Emissions. Quantities of air emissions vary by technology. Sulfur dioxide and oxides of nitrogen emissions can potentially cause ecological impacts. Also heavy particulate loads can subject vegetation, wildlife and human populations in the immediate vicinity of a facility to acute damage. The only heavy industries located in the watershed are two cement plants, and a few ferrous, non-ferrous and electroplating industries. There are no air emission standards and no legislation requiring point source control of pollutants from stacks or waste stream flows. Even when pollution control devices are included in the planning stages of projects there is no economic incentive or legal requirement to include them in plant design. Thus, significant degradation of the environment is to be expected from any industrial development occurring in the watershed.

2.3 Variation by Exisitng Conditions

The severity of impacts summarized in the previous section is highly dependent on the ecological characteristics of the site at which the development activity takes place. Important site-specific variables are grouped into three categories in this discussion. The first category includes the physical and biological characteristics of a site that, together, determine ecosystem stability and resiliency; these include climate, soils and plant and animal communities. The second category includes variables associated with the character of present land use in the watershed; for example, the extent to which a region is pristine. The third category includes the effects of instream flow on impacts on aquatic ecosystems in the watershed.

With regard to the first category, the response of an ecosystem to impacts such as exposure to chronic air pollutants depend on the ecosystem's stability and resiliency. Stability measures the ability of a system to remain unchanged under stressful conditions, whereas resiliency measures the ability of a system to recover following a stress induced change. The response of ecosystems in the watershed to impacts such as fragmentation, the addition of mineral elements, nutrient losses, and chronic exposure to air pollutants is largely a function of their stability. Conversely, reclamation potential is largely a function of resiliency.

With regard to the second category, the extent and kind of ecological impacts expected vary according to the overall character of the land being impacted. Impacts are different and are perceived differently in wilderness and agricultural areas and public and private lands.

The third category, stream flow, includes impacts on aquatic ecosystems (streams, lakes, and impoundments). Stream and river low flows vary greatly and affect dilution of polluted runoff both in the stream and in downstream lakes and impoundments.

Ecosystem Stability and Resiliency

Factors that vary by site and are important in determining stability and resiliency are climate, soils, and plant and animal communities.

- Climate. In the watershed, rainfall is an important climatic variable. The annual precipitation varies from 1200 to more than 4000 mm annually. With the forests present, the impact of the rain on the soil is greatly decreased: rain falls with its whole weight on the canopy, and only reaches the soil after running along the trunks or dripping from the leaves. When the forest cover is removed, the soil receives the full impact of the rain. During heavy downpours soil particles are easily disaggregated and carried away. The amount of material that will be removed from the soil surface by running or infiltrating water will be increased considerably. The forests help to retain soil moisture and trap moisture-laden air. Both factors are important in the hydrologic cycle of the watershed. Destruction of cover results in more solar radiation reaching the soil surface causing an increase in temperature and a higher rate of oxidation of organic matter. Forest destruction results in some climatic modifications that may either cancel out or accentuate an underlying natural trend. Removal of the forests or changes in land use affects the radiation balance (hence, possibly the temperature and rainfall regimes) by changing the albedo, the surface roughness, and the apportionment of radiation between the sensible and the latent heating of the atmosphere. There are great differences between the Bowen ratio (balance between sensible and latent heat) in desert regions (and presumably bare soil) on the one hand, and tropical rain forests on the other. Although there is too little information about many variables for confident predictions to be made about the effect of development activities on climate, it is clear that drastic changes of land use in the watershed have the potential to produce cumulative changes in the physical characteristics of the system through feedback mechanisms. These modifications might be of sufficient magnitude to change ecosystem characteristics in a way that is either irreversible or difficult to reverse.

- Soils. Surface soils do not vary greatly within the watershed. Top soils are shallow, and they tend to erode easily. Fertility is generally low. The heavy rains percolate into the soil, dissolving and leaching out calcium, magnesium, and silicates and leaving iron and aluminum oxides behind. The loss of litter and top soil due to increased runoff, coupled with the reduction in soil fauna as a result of burning and land clearing activities, slows the process of breakdown and incorporation of inorganic matter into the soils, and will result in further decreases in soil fertility and stability. These factors will significantly affect the productive capacity and reclamation potential of land in the watershed.

- Plant and Animal Communities. No historical records of the status of wildlife in the watershed are sufficiently precise to provide either an absolute measure of trends or any index which might enable such trends to be assessed quantitatively. However, there does exist two substantial wildlife areas (Barro Colorado Island and the Pipeline Road Area) which have been extensively surveyed by biologists and for which a considerable amount of natural history information does exist. With this background information on the area and knowledge of the type and rates of habitat disappearance, as described in previous sections, it is possible to make some estimates of the likely effects of accelerating habitat destruction on the wildlife.

  The usual effect of removing forest on the flora is the total disappearance of forest species, except for a few specialized species (i.e., Cacropia, Ochroma) which occur very sparsely in temporary gaps in the climax forest and spread widely in secondary forests. The effect on the fauna appears to be similar. Many of the game and song birds are forest dwellers, are poor flyers, have special food requirements, or are dependent upon unique habitats and, thus, have very restricted ranges. Many will die if their environment is destroyed or excessively altered.

  The terrestrial and arboreal herbivores, and frugivores which constitute the greatest part of the animal biomass, show some food or habitat preference for at least part of the year. During the time of the year when fruit is most abundant, the common oppossum, the coati, the agouti, the paca, the deer, the collared peccary, and the tapir are primarily frugivorous. In addition, the forest squirrel (Sciurus granatensis), spider monkeys, and howler monkeys are important canopy frugivores.

  Many aspects of the behavior and ecology of these animals are affected by seasonal variations in the amount of food available. When food is scarce, it is probably quite important in limiting the number of animals exploiting it. Herbivorous species such as the agouti, paca, capybara, coati, opposums, and rats are important items in the diets of several carnivorous animals. Ocelots (Felis pardalis), jaguarandis (Felis yaguarondi), jaguars (Panthera onca), and pumas (Felis concolor) undoubtedly eat these animals with some regularity. As areas of prime forest are destroyed, it will certainly restrict the range of most of these animals, lower the carrying capacity for animals, force them into competition for food and space for greater periods of time each, and, ultimately, affect their viability as breeding populations. In addition, habitat fragmentation results in a series of isolated vegetative islands whose immigration and extinction rates are strongly dependent on patch size and distance from species pools supplying colonists. Many sedentary species with restricted habitats, especially understorey rain forest species of birds like guans, currasows, and tinamous, may not disperse over relatively small disturbed areas.

  The degree of forest cover profoundly affects the biomass of larger mammals which can be supported, especially carnivores. For example, a biologically sound area of at least 14,000 hectares would be necessary to support breeding populations of a diverse terrestrial mammalian community of ocelots, margays, tyra, jaguarundi, howler monkeys, white face monkeys, spider monkeys, kinkajous, coati mundl, collared peccary, and brocket deer. This land area is decidely too small to support breeding populations of the larger cats and would probably support no more than one dozen otter, five to six pair of tapir, or one pair of harpy eagles. These animals are either herbivores or predators feeding on them so that the effects of direct destruction of primary habitat will necessarily have a significant and immediate impact. In addition, many of the species exploited as a food source by man experience rather substantial changes in behavior over the course of their exploitation. This is especially true of species which have specific feeding requirements at some life history stage, thus may be vulnerable to even transient effects on the food supply or habitat destruction.

Conversely, some species like jaguarundis, brocket deer, and coati mundi tend to do well in cut over, scrub areas, and thus are better adapted to man's presence.

Waterfowl populations are generally quite low within the watershed with the exception of large migratory flocks of blue winged teal that utilize the lakes as stopover areas on flights to overwintering sites. Game bird populations are also quite low as a result of indiscriminant hunting and disappearance of habitat. Increased agricultural and industrial development will further decrease game bird populations, but will have no immediate effect on the relatively small area used by migratory waterfowl.

In summary, the heavy amount of direct habitat loss from industrial, commercial, and agricultural activities and changes in primary production resulting from land use residuals will result in significant ecosystem degradation and concomitant losses of representative samples of ecosystems, genetic materials, and habitat for endangered or threatened species.

Present Land Use

The degree to which an area is still in a natural state before development occurs and the availability of public lands affects both the actual and perceived ecological impacts.

Changes in wilderness character occur rapidly when development is initiated, but are slowed as development expands. For example, people generally travel only limited distances away from home for weekend recreation. As population increases with expanded development, recreational areas closer to the urban center are likely to become more heavily used while areas at greater distances are less likely to be affected. Similarly, the plant and animal populations of a community change rapidly when development is initiated and expands.

The actual amount of change will likely be greatest when it occurs in wilderness areas, and the perception of that change will be different depending on the nature of pre-development conditions. The availability of public land in the vicinity of the development activity also exerts an influence on ecological impacts.

At present, public access to national parks and biological preserves is great, with few restrictions and limited enforcement on the abuse of public lands. Where public land is accessible to urban populations associated with development, back-country recreation in the form of camping, hunting, fishing, and off-road vehicle use will be extensive. Given few regulations and limited enforcement, this recreation can potentially cause major ecological damage. On the other hand, private land holders are likely to restrict recreational use of their land.

In addition to the fact that public lands (such as national forests, national parks, wildlife refugees, and designated wilderness areas) are accessible to the public, most high-quality wildlife habitat occurs on public land. To varying degrees, these habitats have remained unchanged or natural. Moreover, management priorities and enforcement authority vary greatly. We can expect impacts on public lands in close proximity to development activities to be significant. However, the extent of those impacts depends on management and enforcement practices.

Stream Flow

The greatest initial impacts on the aquatic ecosystem will probably occur in areas already deforested. Agricultural,residential and industrial development will consume water and add significant amounts of nutrient-, pesticide-, and silt-laden runoff to the streams. Impacts caused by the addition of pollutants will be exacebrated by flow reductions and consequent reductions in the dilution capacity of the river. The streams and rivers of the watershed have a rather limited fisheries potential. Much of the fish-producing waters fluctuate widely with seasonal conditions and rain, consequently. While there are numerous species, the populations of any one of them is not consistent, and large production capacities are seldom established. Water-intensive technologies, without proper waste stream control, will significantly decrease fish diversity and abundance. Domestic wastewater discharged into streams where withdrawal is heavy can cause stream eutrophication, leading to changes in plant and animal populations. All of these factors in combination will accelerate ecosystem degradation if present trends are not stopped and aggressively managed reclamation programs initiated.

3. Proposed Joint Commission on the Environment

To date much of what has been written or spoken on the subject of the proposed Joint Environmental Commission under Article VI of the New Panama Canal Treaty is vague and elusive. In addition, it does not appear to put the commission, its role or responsibilities in a proper perspective. The lack of perspective may be a principal constraint in planning for an effective commission role in implementing the Treaty.

The Canal watershed is comprised of some 326,000 Hectares of land, the majority of which presently lies in the Republic of Panama. Following treaty implementation in October, 1979 all but a very small portion of this land will come under the complete jurisdiction of Panama. This includes, with the exception of the land administered by the Smithsonian Institute, almost all of the biologically interesting lands and all of the areas deemed critical to the continous supply of fresh water necessary for successful canal operations. It is clear that management of, land responsibility for these lands rests with the Panamanian Government. What is left is a small strip of land on each side of the canal which is necessary for maintenance and operations of the canal. This land is principally deviod of forest and consists mainly of administrative buildings, housing, warehouses, and docks: areas which are clearly important to daily operations but not relevant to the long-term integrity of the entire watershed.

Environmental affairs in the Canal Zone, including military bases, are presently administered by the Canal Zone Government (Environmental Quality Committee) and various environmental committees of the several branches of the United States military. They derive their authority from a selective mixture of U.S. laws, excutive orders, and administrative regulations (i.e., NEPA, FWPCA, Endangered Species Act, Army Regulations AR-200, Canal Zone Code, CZAR, etc.). Successful administration of these various regulations is sporadic at best and depends to a great extent on the interest and dedication of the individuals in charge of the various committees. A strong environmental ethic among U.S. governmental officials in the Zone is lacking. The undertaking of new environmental initiatives are comstrained by a lack of funds and clear administrative mandates as to role and area of responsibility. Upon implementation of the treaty the situation will be further confused initially by the dissolution of the Canal Zone Government and this administrative responsibility for applicable environmental regulations and later by any reluctance to commit funds to projects not directly related (from the new administrations point of view) to Canal operations. It appears that the proposed Environmental Commision will have responsibility only for the area under control of the Joint Panama Canal Commission or less than one-twentieth of the entire Canal watershed. Any of the environmental laws, regulations etc. now in effect can only apply to this area and not to the entire watershed. Any environmental initiatives applied to the area under Panamanian jurisdiction will come only at the request of the Panamanian Government and will be subject to many of the constraining conditions already hindering the development and implementation of environmental protection in the Republic.

Panama has organized for the Administration of new responsibilities that will appear following implementation of the Canal. They have already formulated a Panama Canal Authority which will in the long run, assume the complete responsibility for administering the Canal. In the short run this Authority will, among other things, be responsible for the use of lands and water in the watershed. In addition to this Panamanian Authority, Panamanian will participate in the Joint Commission which will administer Canal operation until the year 2000. It is not at all clear how these two organizations will divide or coordinate responsibilities. It seems likely that the Panamanian Authority will have overriding responsibility for the watershed and this will probably overshadow the Joint Commission in any matter that extends beyond the specific limited bounds of what will remain under dual adminsitration. It is, therefore, important to consider lines of administrative control and responsibility for the Environmental Committee. As envisioned, the Environmental Committee would:

- Develop a data base of information relevant to the environment of the canal area
- Monitor the environment
- Study and analyze policy and programs
- Report annually to the two Governments on the state of the environment.

The Committee's impact and effectiveness in carrying out these functions depend, to a great extent, on its working level within the overall watershed management plan and the Panamanian Government. If this group is a committee within the Joint Agency it's area of responsibility and impact on environmental policy decision is likely to be limited. A slightly better arrangement would be to make the Enviornmental Committee administratively responsible to the Panamanain Authority on the watershed. Possibly the best situation would be to establish this committee in such a way that it would be administrately free of both entities. In this way it can coordinate with the numerous government groups whose responsibility and authority will evolve over the next 20 years. In this way the committee will have the capacity to expand and adapt as problems and needs are defined and as participants gain confidence in their cooperative activities.

My suggestion in this regard would be to establish a five to seven member committee composed of technical experts with some political or policy analyses or planning experience. This committee should report to the Authority but should not have to depend on the Authority for validation of it's role, area of jurisdiction, or financial support. Many problems that the committee will deal with are jurisdictional: the boundaries of local government and other political institutions will rarely coincede with the natural boundaries of the watershed. Other problems will be jurisdictional: water supply or water quality agencies are administratively separate, with poorly defined functions. Priorities will change and shifts will be brought about by changing public opinion and attitudes. Thus it is important in planning such a committee to allow for flexibility to meet future needs of the society. There are many serious implications in the design of this group and establishment of its proper level of input. A simple coordinating group may prove too weak and too slowacting to initiate needed programs. A more authoritative international agency may meet resistence from local government, generating more friction then tangible results. This is especially true situation where the differences in stages of economic development and perception of environmental problems between the two countries is so great. There is almost no perception by public officals of the need for environmental regulation. While many officals and non official persons may be somewhat concerned with the problem, neither side (Canal Commission or Panamanian Government) at any level, may be willing to accept suggestions or listen to exhortations from an environmental committee. In Panama, as in many other developing nations, environmental degradation as a problem ranks far behind other such as unemployment, health care, and industrialization. The designers of the Environmental Committee must recognize these differences as well as the problems of cost sharing, financial aid and inequities in technical and professional capabilities between the two countries.

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The American Museum of Natural History Central Park West at 79th Street New York, New York 10024 (212) 873-1300

DEPARTMENT OF ORNITHOLOGY

24 August 1978

Office of Tech. Assess. Ocean Prod.
600 Pennsylvania Avenue S.E.
Washington, D.C.

Panama Canal Environmental Meeting
10-11 Aug. 1978

Att.: Mr. Peter Johnson
and/or
Ms Prudence Adler

Dear Mr. Johnson and Ms Adler:

The meeting I found interesting, but its usefulness in preserving the Canal Zone environment from further deterioration depends upon the strictness which which the Canal Zone government prevents invading squatters and small farmers from violating existing regulations in the period before surrender of territory to the Panamanian government, the attitude of Panamanian government towards forest cutting and the practical steps taken to prevent this, and the conduct of the U.S. military and the Canal Commission towards the areas that for some years will remain under U.S. control. The character of the appointees to the Environmental Commission, which should include some qualified biologists and conservationists who are not timid in expressing their opinions, may prove very important. Congress can require that the U.S. appointees include such specially qualified persons The Canal Zone Biological Area includes a number of U.S. naturalists very familiar with the Canal Zone environment. Although we cannot control the Panamanian appointments, such an institution as the Gorgas Memorial Laboratory in Panama city includes qualified Panamanians, notably Dr. Pedro Galindo, its former director.

Sincerely yours, E. Eisenmann
Eugene Eisenmann

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(by Stephen Gibbs, University of Washington)

Preliminary Response to OTA Meeting on Environmental Problems in the Republic of Panama and Their Relationship to the Canal

The Washington, D. C. meeting of professionals of August 10 and 11, 1978 highlighted numerous concerns for the environment of the Republic of Panama. It was pointed out there that the Republic has several important watersheds and ecological areas which are experiencing rapid changes, due mainly to the encroachment of campesinos and commercial wood cutters. This encroachment has been facilitated by the creation of new lakes and the building of new roads in previously inaccessible forest and jungle areas. Furthermore, the relaxation of previously strict enforcement of non-access rules in the Panama Canal Zone has permitted significant loss of forest in areas adjacent to Gatun Lake and Gaillard Cut. However the Zone occupies only about 9 percent of the total Canal watershed and campesino and commercial activity or potential activity throughout the rest of the shed, in areas which have always been under exclusive Panamanian jurisdiction are probably of equal concern.

My interest primarily relates to the Panama Canal operation and the economic benefit created by it which accrues to the Republic, and the United States and the world generally. I have included an article reprint on this subject. Set down here are my thoughts on what the U.S. and the Republic of Panama should do in the near future about the potential and actual environmental problems existing in Panama as they relate to my interests.

The changes taking place in the Canal watershed affect the two countries in three ways or dimensions; Economic, Ecologic and Panamanian Sociologic. The economic dimension is affected because deforesting activity in the Canal watershed impacts upon the regional water supply. This water is used for ship transiting, for hydroelectric power production and for consumption. In principle, water falling in the Canal watershed and collected in Gatun Lake and Lake Alajuela (Madden Lake) are substitutable between these three uses and allocation is based on the relative economic benefit of shifting water supplies from one use to another. Given a finite supply and defined demands, it is possible to determine the highest value mix of water uses. As water supplies change, due to alteration of the hydrologic character of the watershed, so does the total economic benefit available from the water. This hydrologic character is being changed by deforesting activity and economic consequences ensue.

The Ecologic consequences (which I think of as affecting non-marketed resources) of deforestation were discussed at the meeting and will only be catalogued here as threats to flora/fauna abundance and threats to archeological sites.

Panamanian sociologic consequences pertain to the lifestyle of the campensinos--their employment, education, integration into Panama's society--and the health of the general Panamanian population since this may be affected by the mobilization of diseases and disease vectors inhabiting the watershed.

Any public action, including inaction, is a policy alternative. The consequences of public action, arising from the selection among a set of policy alternatives, should be evaluated for its effect on the three problem dimensions listed above.

My own interests caused me to focus on the economic dimension. Several important economic questions were raised at the meeting which elicited divergent opinions. In some cases the divergence arose because panelists employed different data bases in their analyses and answers while in other cases the divergence appeared to arise from differing concepts of social welfare.

Data bases appeared to differ when it was asked whether campesino encroachment on the Canal watershed would reduce the quantity and timing of water runoff to the Canal. Water supplies to the Canal can be affected in two ways. The total storage capacity of the lakes of Gatun and Alajuela can be reduced by siltation. Since the Isthmus experiences a drought from December to about March, base water flows from water stored in the watershed soils are important in supplementing lake-stored supplies during this time. Some panelists pointed out that even though the watershed had been slowly changing over a 30 year period (and the rate of change had accelerated from 1972 onward) no increase in dredging requirements had occurred. Limited surveys of Lake Alajuela, one of the principal sediment traps of the watershed, indicated that siltation was not occuring at a rate sufficient to be of concern, although ultimate filling of the Lake was inevitable. As for base flow runoff and its contribution to lockage water availability (or more correctly--availability for all three water uses with lockage use being critical during the dry season) indications were that water supplies were adequate.

Working from a different data base, other panelists felt that water availability for all three uses would begin to be strained by about the year 2000 if recent trends in siltation are continued, as evidenced by observed heavy sediment loads of river waters in the watershed, and in treecutting activity.

It seems to me that this divergence of opinion can and should be resolved and that the Environmental Commission could take a leading role. I propose that the Commission avail itself of the technical expertise of Dr. Brenden Harley of Resources Analysis Incorporated and the Massachusetts Institute of Technology. Dr. Harley has developed a computer based technique for analyzing watersheds which can be used to predict water runoff quantities and timing. The data base for his model consists of detailed topographic surveys, soil and vegetative types, and location and timing of rainfall. This model could be extremely useful since it could be used in conjunction with data on water supply needs to determine the conditions under which the Canal watershed could no longer be counted on to supply adequate water. Demographers could then compare the computer model's description of the watershed in the low-water-supply case with their evaluation of the likelihood of the watershed ever coming to resemble the description. By this means not only will all parties come to employ the same data base, they will also be able to analyze and evaluate very quickly a large number of possible futures of the watershed and the impact these will have on water supplies and on the economic dimension. I will forward to the OTA office shortly a more thorough description of Dr. Harley's model.

Obviously an important aspect to the water supply question is the demand side. I understand that forecasts of water needs for all uses, especially Canal operations, based on a forecast of Canal traffic demand and capacity constraints are maintained by the Canal Company. It would be useful to have the Company make a description of their methodology and forecasts available to the OTA for summary in OTA's final report.

Several times in the discussions it was asked who should bear the costs related to maintaining the environment of the Canal Zone and watershed. Currently accepted economic theory holds that inputs to production should be employed up to the point where their marginal product equals their marginal cost. A relevant question then is "Do environmental controls have a marginal product in the Panama Canal transit operation?" i. e. "Would they contribute to running the Canal in the sense that IBM or Boeing employ energy and laborers to produce computers and airplanes?" Judging from comments made during the meeting I would say that at the present time only those environmentally motivated efforts which reduce health hazards to Canal operating personnel count as having a positive marginal product. However, if treecutting practices threaten to become widespread in the Lake Alajuela watershed, affecting the availability of water for its three uses, supplies of water for lockage purposes will be affected and environmental controls in the watershed may then reasonably be charged to Canal operating costs.

Theory however also holds that economic benefits are only one component of social welfare and societies may depart with reason from the equality of marginal costs and marginal product, at the cost of giving up some economic benefits. There are good and bad ways to go about deciding how much cost to incur and how much to improve the environment. The best or least-cost way to achieve a given level of environmental amenity would be to pay for it directly--that is if the United States wanted to see habitats maintained in Panama to a degree not maintained by the Canal authorities who do their decision-making on purely financial grounds, then the United States should make direct contributions to an environmental maintenance fund to a level such that marginal additional payments result in increases in environmental amenity which are judged to be just worth the added payment. This is a version of the marginal costs equal marginal benefits rule where marginal benefits are subjectively determined. This same type rule would apply for example in the case of protecting endangered species in Kenya—something the U.S. has been involved in for sometime I believe.

I chose not to attempt to articulate the above during our discussions because, as was pointed out by several panelists, political practicality will probably necessitate departures from the theoretical ideal. Nevertheless, the above description of the theory may be a useful point of departure for those directly involved in navigating budgets and legislation through the political threshing machine.

Several panel comments concerned questions of marine pollution in Panama under an "all Panama" regime of control, most of the above discussion of economic theory as applied to protecting non-market resources applies. So long as pollution does not affect Canal operations, clean up and spill prevention costs should not, in theory, be put in Canal cost accounting. Pollution is an economic problem in so far as party A pollutes party B's environment without mutually satisfactory side payments. Panama should be left to decide for itself how polluted its nest should be since no party B is involved. If U.S. citizens want to see Panama's water kept clean to a degree greater than Panama does, the United States should be called upon to pay for the costs of maintaining environmental superior amenities. Again, political reality will probably dictate some departures form the theory.

Finally, I would like to recommend that the Environmental Commission, not only take cognizance of the above comments but that it maintain on its staff, or have easy accessibility to persons possessing economic expertise. The expertise should lie in the realm of natural resource economics-environmental policy.

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INTERNATIONAL JOINT COMMISSION
UNITED STATES AND CANADA
WASHINGTON, D.C. 20440

October 16, 1978

Mr. Peter Johnson
Office of Technology Assessment
Washington, D.C. 20510

Dear Mr. Johnson,

It has been my pleasure to serve on the DTA panel for considering the environmental problems affecting the Panama Canal in light of Article VI of the Panama Canal Treaty.

Attached are my comments concerning some matters that might be considered in determining the organizational structure and procedures of the Joint Committee on the Environmental established by Article VI. I have, of course drawn on my experience in working with the International Joint Commission - United States and Canada, to provide the basis for most of my views.

I hope these comments will be helpful to your organization. If I can be of further assistance please feel free to call on me. I appreciate and have enjoyed this opportunity.

Sincerely,

John F. Hendrickson

John F. Hendrickson
Executive Director

JFH/br

Enclosure

There are similarities between the proposed Joint Commission on the Environment (JCE), established by the Panama Canal Treaty, and the International Joint Commission - United States and Canada (IJC), as established by the Boundary Waters Treaty of 1909. For this reason the comments presented herewith deal with those similarities hopefully in such a way that it might be helpful in framing legislation to implement Article VI of the Panama Canal Treaty.

Article VI of the Panama Canal Treaty commits the Governments of the United States and the Republic of Panama to implement the Treaty "in a manner consistent with the protection of the environment," and to consult with each other to "ensure that they give due regard to the protection and conservation of the environment."

While the U.S. - Canadian Boundary Waters Treaty does not refer precisely to the "environment" it does contain a short paragraph that expressly prohibits the pollution of boundary waters on "either side to the injury of health or property on the other."

Paragraph 3 of Article VI of the Panama Canal Treaty provides that the Parties will furnish to JCE "complete information on any action taken . . . which, in the judgement of both (emphasis added) might have significant affect on the environment." This, in my view, is significant, because it suggests that the Governments, or Parties to the Treaty, can decide on those matters which the JCE might review. The fact that such information is to be made available as far in advance of the implementation of an action as possible is an excellent provision but does not alter the fact that there first must be a judgement on the part of the signatory governments that the action has significant environmental impacts.

In the Boundary Waters Treaty the IJC undertakes studies and makes recommendations on matters referred to it by the two governments. Thus, in this instance it is much clearer that the Governments control more directly what the IJC does. It would seem however, that those provisions of Article VI which provide for the consultation of the two Governments, and the provision for submission of information to JCE which the Parties agree is environmentally significant, have the effect of controlling to some degree the work of the JCE.

The Panama Treaty provides for equal representation on the Joint Commission. This is essential in the interest of making a meaningful contribution to the spirit of the Treaty. It allays any concern that either Party has any advantage in the work of the Commission; it assures a cooperative effort, and for the most part provides a basis for a "third-party" assessment that could bridge a national bias gap.

The responsibility of the JCE is primarily that of "reviewing" and "recommending." A somewhat broad interpretation of "reviewing," it seems to me, would allow the JCE to undertake sufficiently detailed studies on which to make recommendations to "avoid" or "mitigate" adverse environmental impacts.

There appears to be no authority vested in JCE to require the Parties to implement its recommendations. There is similar lack of authority in the IJC. While this seems to some of those not directly participating in Commission activities to be a weakness in the process, it provides the Governments with advice from a third party not encumbered with program or national policies. The absence of implementing authority, in other words, enables the Commission to make such recommendations as will benefit both Parties without regard to the limitations of national policies or legislation in either/both countries. In fact, under the provisions of a U.S. - Canadian bilateral Agreement - the Great Lakes Water Quality Agreement - over which the IJC has "watch-dog" responsibilities, the Commission can make recommendations to either or both governments on legislation needed to implement the provisions of the Agreement.

This does not mean the IJC should or does ignore the national policies of the two Governments, but consideration of these matters occurs for the most part in the Advisory Board structure which is discussed later.

While paragraph two of Article VI provides that the Joint Commission shall "periodically review the implementation" of the Treaty, it must draw on the Parties for complete information which, in the judgement of the Parties - not the Joint Commission - "have significant" environmental impacts. Thus, as has been pointed out previously, the Parties have, in a sense, retained some control over what the Joint Commission will review. There is no prohibition, however, for the Joint Commission and the Parties to consult and agree on what actions will have significant environmental effects.

In the case of the IJC, an Article in the Treaty provides that "questions or matters of difference arising between them (the Parties) . . . shall be referred from time to time to the International Joint Commission for examination and report . . . whenever either Government . . . shall request that such questions or matters of difference be so referred." While either Party can ask the IJC to examine and report on these "matters", in almost 70 years of the Commission existence, the Governments have never implemented this unilateral authority. All References to the Commission have occured after the Parties have reached Agreement on what it was they wanted the Commission to examine and report on.

An important factor, which should be carefully considered in setting up the new Commission is that of whether or not the Parties will instruct its members to the Commission. The IJC enjoys an "uninstructed" status. In studying a joint problem, it is not the Commission's role or purpose to negotiate a solution. That responsibility should be left with the Parties to the agreement. An "instructed" Commission would be restricted, to a very large extent, in its ability to offer the best advice on measures to avoid or mitigate an environmental problem. Such advice is based more on the technical or scientific aspects of the problem. The decision as to the political and financial feasibility of implementing the advice remains with the two Governments. Nor is the IJC, in its present circumstance at least, required to comply with U.S. or Canadian law, i.e. preparation of environmental impact statements, Freedom of Information Act, etc. It is an international organization and exempt from certain federal regulations. In addition, it's files are priviledged unless the Commission agrees to make them available to the public. Again, this situation may appear to some to give the Commission too much administrative freedom, but the fact that its recommendations are not binding enables the Governments to grant the Commission this freedom. At the same time Governments can expect more candid advice based on factual scientific evidence from the Commission.

Organization and Structure

The organization and structure of the Joint Commission on the Environment will be of paramount importance. Some of the questions to be resolved include but are not limited to:

(1) The number of Commissioners from each country and whether they be full time of part time, and how they are selected.

(2) The size and makeup of supporting staff, and the advisability of a joint staff or bilateral units.

(3) Promulgation of procedures.

The number of Commissioners to be appointed is important. In this case an important factor is the size of the job to be undertaken. In the writers opinion, the number of environmental problems now in existence in the Panama Canal Zone do not appear to be to numerous. This is not to mean that they are not significant or unimportant. But existing and potential problems have been identified, and an assessment of the anticipated work load for the Commission, in my view, does not indicate the need for a large number of Commissioners - one that might represent all legitimate interests in the canal operations.

The IJC has six Commissioners, three from the United States appointed by the President with the advice and consent of the Senate, and three by the Canadian Governor - General. The U.S. Commissioners are appointed for fixed terms, usually two years in duration. At present there is no stipulation for appropriate background and experience for appointees although U.S. legislation has been introduced in recent years that would, if enacted, require the President to make his appointements from appropriate disciplines.

In the writer's view the Joint Commission on the Environment would be able to accomplish its purposes if it did not exceed six in number, three from each Government.

In the IJC the co-chairman, one from each country, are full time employees of their respective Governments; the other four Commissioners are part-time. The United States Commissioners are compensated on a weekly "hours worked" basis not to exceed half-time on an annual basis. Such an arrangement provides full-time direction of the Commission's business by co-chairmen, with the other Commissioners participating in providing the Governments with advice and recommendations after appropriate studies are completed. In recent years the work of the IJC has expanded so dramatically as to at least double the size of the professional staffs and to cause the Commissioners be appointed on a full-time basis. Such action, however, has not yet been taken.

The professional staff(s) to be established to support the Commission is also important. It might be large enough for the Commission to carry out its own studies, or it might be small enough to accomplish only the necessary basic support. Although, as I have indicated above, the IJC support staff has grown significantly over the past few years, percentage wise, it is still relatively small and does not actually carry out studies for the Commission.

The staff of the U.S. Section of the Commission, located in Washington, D.C., is composed of a Secretary, a position identified by the Treaty itself, an Executive Director, an Environmental Advisor, an Engineer Advisor, and a legal advisor. A public information officer and an engineer assistant are to be added to the staff after the first of the year. The primary work of the staff is to review the work of the several Advisory Boards which serve the Commission, and provide the staff work for the Commission. The Canadian Section has a comparable staff domiciled in Ottawa.

The Commission also has a joint staff, composed of equal numbers of U.S. and Canadian scientists and located in Windsor, Ontario, a central location to the Great Lakes Basin. This office has as its principal purpose assisting the Commission in overviewing the efforts of the two Governments to implement the Great Lakes Waters Quality Agreement, a major effort to halt the degradation of the largest source of fresh water in the world.

Over the years of its existence the IJC has developed a system for utilizing the expertise of existing agencies. As a result the Commission has succeeded in accomplishing its work at a minimum expense and in a manner which substantially avoids duplication of national programs.

The system sets up Advisory Boards which conduct technical or scientific studies of specific problems and reports with recommenations to the IJC. The Commission then considers the Advisory Board's report, undertakes to compile other information from interested persons, industry and the public in general, and then write(s) its own report with recommendations to Governments.

Such a procedure has worked well within the system of governments of the United States and Canada. The writer is not certain that this exact procedure would be effective in either the U.S. and/or Panama but there may be limited application of this procedure which would afford the JCE access to outside expertise.

In the IJC operation the Advisory Boards are appointed by the Commission from agencies of governments having expertise in fields closely related to the problem being studied. These appointments require consultation with the agencies before they are made to make certain that agency cooperation is achieved and that the agency fully understands the work of the Commission and the extent of the agency's commitment in terms of manpower and financial support.

In my view, the Advisory Board concept should be seriously considered in setting up the Joint Commission as a means of obtaining the maximum amount of professional help at a minimum Commission operational cost to the Governments. Information, technical data, and program expertise become available to the Commission in this process.

A major staff consideration remains however; whether there should be a joint centrally located staff to support the Commission or binational staffs to support the separate U.S. and Panamanian commissioners.

Because of the completely bilateral nature of the IJC, it is highly desirable to have bilateral staffs, one located in Ottawa and the other in Washington. Since the JCE will be set in a somwhat different geographical context, however, complete agreement on the makeup and responsibilities of a staff-whether joint or other - should be determined in advance.

It is important that if the Commission is to be composed of equal representation, as is the case in the IJC, there will in all probability, be co-chairmen. Then the question is whether there will be a joint staff under the direction of two chairmen, or whether each Section will have its own staff under the direction of the respective chairman. It is difficult to comprehend that a single office could operate effectively if there are two persons directing its activities, even though there might be Co-Chairmen who work well together. In such a sensitive area as the environment there is substantial opportunity for disagreement. A possible solution to the Co-Chairmen - one-office concept would be the employment of a staff Director who would have substantial or even complete authority to direct the staff. He would receive his policy direction jointly from the Co-Chairman but would have full authority to direct and assign staff to perform required support function.

Other Matters for Consideration

There are numerous other matters to be considered having a direct impact on the kind of Commission to be established and the nature of its operations.

Area of Jurisdiction

After considering a number of options it is my opinion the Commission's area of jurisdiction, geographically speaking, should include the area of the agreed Canal zone, the designated military areas, the watershed including that portion outside the Canal Zone, and the approaches to the Canal on both coasts. Provision should also be made that where there is Party agreement the Commission can be authorized, on an ad hoc basis, to look at activities outside the designated areas that are having significant environmental impacts in the area.

Lines of Communication

Since it is incumbent on the Governments to "provide" the Joint Commission with "complete information", the Commission's findings and recommendations should be to Governments rather than to the Canal Commission.

Budget

The Governments should finance the costs of the Commission on an agreed-to basis. The autonomy of the Commission can be better protected if the Governments provided the funds to support its activities. If the Commission activities were financed from Canal revenues it would probably create budgetary difficulties and would probably make the (m) JCE subject to the Canal Commission's policies.

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DAVID S PARKER
DIRECTOR OF CORPORATE PLANNING

B-448

28 August 1978

Mr. Bennett L. Silverstein, Project Director
Office of Technology Assessment
Congress of the United States
Washington, D.C. 20510

Dear Mr. Silverstein:

I appreciated the opportunity to serve on the Ad Hoc Panel for a study of the Protection of the Environment about the Panama Canal. With three tours of duty with the Panama Canal over a period of about 25 years, and as one who has been personally involved in enforcement of environmental regulations, the subject is one of considerable interest to me.

At the conclusion of the meeting on August 11, you asked individual panel members to submit their views on the important environmental concerns, on additional information which might be required for the panel at this time, and on the need for additional discussions or meetings required.

I regret that I missed the meeting on August 10, but from separate discussions with some of the participants and from my own experience I believe that the major areas of interest are fairly obvious and easily identified. They include the impact of potential environmental changes on the following:

Physical functioning of the Canal. There is some threat of increased sedimentation through improper land use which conceivably could aggravate dredging problems in the navigation channels and affect the storage capacity of Madden Lake for navigational and flood control use. From the evidence presented, this has not really been a critical problem, nor do I think it is likely to become one before the end of this century. It must, of course, be carefully monitored, as the Panama Canal Company is currently doing.

Water quality in Gatun and Madden Lakes. Development within the watersheds around the lakes - including farming, recreational and industrial - may impact on water quality which would impair the suitability of the water supply for consumption and for recreation and general ecological impact. This is not currently overly serious, but over time could become significant, particularly if the squatter situation is not brought under control. Actions to avoid this problem will be essentially under Panamanian jurisdiction. The methods of avoiding contamination are not technically difficult but do involve proper regulation of development. Panama has shown an awareness of this problem.

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Other health and sanitation. This is somewhat related to the preceding problem, involving control of malaria, yellow fever and other tropical diseases. The present authorities, both US and Panamanian, are undoubtedly well aware of these problems. Their control may require significant expenditures of funds in years ahead.

Scientific ecological studies. This refers to the types of studies being performed by the Smithsonian Institute, Gorgas Memorial Laboratory and corresponding Panamanian authorities. Many of these studies require an undisturbed natural environment which could be markedly affected by encroaching human activity such as the increasing number of squatters on the West Bank opposite Barro Colorado. Undoubtedly, the Smithsonian will closely monitor this situation. At the meeting on August 11, Mr. Galindo indicated that the Smithsonian representatives were satisfied with the arrangements and contracts under the new treaty. I believe this should be verified in writing from the Smithsonian. It received limited discussion at our meeting.

Miscellaneous environmental problems. There are other individual problems such as oil spills in Canal waters and sewage disposal in ocean areas. These were not discussed while I was present. I assume that the appropriate US authorities will have the capability for handling those of immediate impact (oil spills), but may find a joint forum useful for others which may occur.

Problems not directly associated with the Canal. Reference was made to environmental problems not directly associated with the Canal or the new treaties, such as hoof-and-mouth disease from Colombia along the Darien Highway. It is my view that the proposed committee should not address problems which are distinct from the Canal unless there is some connection (e.g., yellow fever barrier line). I believe that US technical assistance for such problems should be handled through normal Embassy-AID channels, with Canal authorities assisting where they have a capability or interest.

With respect to procedures, funding, etc. when the treaty goes into effect, it is my understanding that these subjects were generally beyond the purview of the Ad Hoc Committee since they would be addressed by continuing negotiations through established executive channels. However, I would suggest that the implementing legislation be made sufficiently broad so as to permit, or at least not inhibit, expenditure of funds for the Joint Committee by the Panama Canal Commission. There will be many unforeseen and unresolved problems in many other fields in addition to environmental, and flexibility in handling will be essential if the Commission is to function efficiently.

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Even though it may be premature or inappropriate for me to comment on the organization and functioning of the final Joint Environmental Committee, I would like to offer several comments. Since both the US (Canal Commission) and Panama will have environmental agencies, I believe the permanent secretariat should be vested in one of them, as a part-time duty for one or more employees. This would save duplication of files and the unnecessary expense of full-time employees. I do not visualize an extensive program of work for the Committee -- but rather occasional meetings as circumstances require -- and I find it hard to justify a permanently staffed office for problems which have surfaced to date.

With respect to additional meetings or activities for the Ad Hoc Committee, I do not believe they are required unless the Executive Branch feels that additional comments could be useful in defining parameters for discussions with Panama concerning treaty implementation. Since the Ad Hoc group has no real charter, I do not believe there is much point in proceding further.

As a final comment, the original purpose of the Ad Hoc group, as I understood it, was to offer suggestions which might influence implementing legislation. I believe the only advice appropriate at this time is, as indicated above, to keep the legislation as flexible as possible so as to permit timely response to problems which may arise.

Sincerely,

David S. Parker
Major General, USA Retired

DSP:bhb

D-40

Resources for the Future
1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

October 18, 1978

Mr. Bennett L. Silverstein
Office of Technology Assessment
Congress of the United States
Washington, D.C. 20510

Dear Ben:

Enclosed please find a brief review of priority areas of general environmental concern and some specific questions concerning health and sanitation associated with implementation of the Panama Canal Treaty.

I have suggested two broad areas where further information would be useful: resource availability for manitaining and improving health status; and existing health status on the Canal area. Some recommendations regarding training, surveys, and monitoring are then offered.

The Panel meetings were informative and encouraging. I am sure that Panama, with some additional, critical back-up support from the U.S. and perhaps international donor agencies, will be able to maintain a healthy environment for human settlement and livelihood in the Canal area.

Thank you very much for the opportunity to participate in this exercise. I hope the enclosed comments are useful.

Sincerely,

Patricia L. Rosenfield, Ph.D.

Enclosure

202/462-4400 *Cable: Resources*

D-41

Patricia L. Rosenfield
Resources for the Future
Washington D.C.
October 18, 1978

IMPLEMENTATION OF THE PANAMA CANAL TREATY: ENVIRONMENTAL IMPACTS WITH EMPHASIS ON HEALTH AND SANITATION CONCERNS

This report briefly summarizes priority areas of general environmental concern. The specific area of expertise of the author, health and sanitation, is then discussed. A review of the existing situation in Panama is followed by some questions concerning health conditions in the Canal Zone and recommendations about future health activities.

Priority Areas of General Environmental Concern

Important environmental concerns associated with the implementation of the Panama Canal Treaty are focussed on both the zone and watershed areas, and involve changes in the land use and water availability. The most significant concern gleaned from documents and discussions is availability of adequate water supplies of adequate quality. In the watershed area around the Canal Zone is found the major supply of water for maintaining sufficiently high levels in the Canal for passage of ships. Activities that limit the amount of water supply should be severely regulated. Such activities include water withdrawals from the lakes and tributaries as well as land use practices that increase sediment loads in the lakes and therefore decrease the supply for the Zone. In addition, lakes in the water shed area provide the main water supplies for the inhabitants of the Canal Zone and for the major cities in the area. As population growth rates are high (and migration to this area is increasing), it is essential to maintain sufficiently good water quality in the lake so that potable water is easily accessible to the inhabitants of the Zone area. This means protecting the water not only from the above mentioned activities but also from polluting activities around the lake shore ranging from agricultural and industrial activities to tourism and recreational ones.

A major corollary of protecting water supplies in the watershed area is regulating land use. The land in the Canal Zone area is not only affected by deforestation as mentioned above but also by attempts to provide housing for the migrants who come into the area and to expand agricultural activities. These land uses, if not adequately regulated, could adversely affect water quality and supply of the entire watershed and Canal Zone area.

In the Canal Zone area proper, protecting water supply and regulating land use are natural and human resource concerns. There is a need to maintain public services for the human inhabitants of the Canal Zone, especially drinking water quality, sewage treatment, and garbage disposal. Without adequate services, disease could become rampant (as discussed below). In addition, a major concern is maintenance--maintenance of water quality, maintenance of land use regulations, and maintenance of services to the inhabitants of the Canal Zone. This requires both appropriate institutional arrangements and mechanisms for enforcing regulations. The appropriate laws have been passed in Panama. Enforcement of environmental protection measures and maintenance of environmental services are the keys to ensuring environmental quality in the Canal watershed and Zone areas.

Area of Expertise: Health and Sanitation

Health Conditions in Panama. The most recent information available on health conditions in Panama may be found in a Department of Health Education and Welfare publication (1). In this document general health status and specific health problems in Panama are outlined. The discussion is briefly summarized below.

Living conditions in both rural and urban areas were not in 1972 conducive to good health. In the urban areas, the growing urban lower class was living in crowded and unsanitary conditions in poor housing. The rural areas lacked proper sanitary facilities, especially water and sewage. Indeed, the serious disease problems in Panama are related to these inadequate conditions. Tuberculosis in 1972 was a major problem, followed closely by enteric diseases and malaria. More recent information is not available but given worldwide decline in economic conditions since 1972, it is likely that the situation has not greatly improved.

Tuberculosis, enteric diseases, and pneumonia, complicated by widespread malnutrition are responsible for high infant and child death rates. These problems are related to inadequate living conditions compounded by inadequate immunization programs. In the young adult and working age groups, accidents and tuberculosis are the major causes of mortality. In the older ages (over 45) the leading causes of death are heart disease, cancer, and stroke. The communicable diseases may primarily affect children but they have significant impacts on the older ages in that permanent disability may result from the communicable diseases, especially tuberculosis. Tuberculosis is a particularly serious problem in Colon and Darien Provinces. Darien Province is also the site of the final portion of the Pan-American Highway which means there may be infected migrants moving out of that area who could transmit tuberculosis and other communicable diseases.

The HEW Panama study described briefly the health resources situation. Panama has already reached the WHO minimum standard physicial/population ratio of one doctor per 10,000 persons; it was found, however, that most of the physicians worked in more than one job and also that approximately 70 percent of all physicians were located in Panama City, 5 percent in Colon. Panama City, at the Pacific end of the Canal Zone, also has an abundance of medical facilitoes: "The major Social Security hospital, the psychiatry hospital, the University of Panama, Social Security clinics, and other large public and private hospitals are located in Panama City... yet while the physical facilities are abundant in Panama City, the private physicians and facilities are undoubtedly too expensive for the poor" (2). There are few health facilities in the rural area where there is also a shortage of medical personnel. Manpower shortages could lead to complications in maintaining services in the Canal watershed and Zone areas.

The health legislation in Panama contains sanitary codes supplemented by other laws regarding specific health problems: "The regulations set general sanitary standards for the production, processing and handling, and sale of foods. Environmental sanitation regulations cover water supplies and sewage systems but not industrial hygiene and urban housing. In general, there is control of the activities and the most highly trained medical personnel but not of the various categories of medical assistants and auxiliaries. The current status regarding the enforcement of these regulations is not known" (3).

Many agencies provide health services in Panama: Ministry of Health, autonomous government agencies, private sources, voluntary agencies, international organizations, agencies of other governments, and nonprofessional groups (4). In 1968, it was estimated that total health expenditures were $49.9

million mainly relating to increased expenditures of the Social Security Fund and IDAAN (water supply and sewage agency). The budget for IDAAN is charged to the health budget since IDAAN is responsible for building and maintenance of water and sewage systems in Panama. These expenditures probably inflate the health budget because it has been estimated that 50 percent of water supply and 20 percent of sewage system expenditures are not directly linked to health status of the population (5).

Panama in 1972 received development assistance from Pan American Health Organizations, World Health Organizations, Inter-American Development Bank, Agency for International Development and private voluntary organizations. "From 1966 to 1967, the United States alone extended financial aid to Panama amounting to $205.9 million. During the same period, the international organizations contributed $51.8 million for all efforts"(6). The emphasis of these assistance programs has been on the problems of population, malnutrition, rural health services, tuberculosis, malaria, and yellow fever.

In 1957, there was the major health survey in Panama by Dr. Ira Falk which made recommendations about improved health services for both rural and urban populations. Many of these recommendations have beem implemented and therefore there is a positive feeling about the effectiveness of the health services in Panama. In the national health plan for 1962-1970, every critical problem was identified but unfortunately very few priorities were set. The emphasis on increased tourism, for example, is very much related to the availability of potable water supplies, safe sewage, available transportation and protection from communicable diseases. Yet these factors are not considered in relationship to tourism. Similarly, plans for developing beef for export did not make provisions to prevent the reintroduction of foot and mouth disease if the Panama Highway is completed through Darien (7). The three main health problems in Panama were summarized by the report: 1) maldistribution and poor, inappropriate utilization of basic health services; 2) problems of food use and consumption; and 3) inadequacy of basic environmental sanitation. Two critical aspects of concern were: 1) population growth, that is, the population of Panama was estimated to triple by the year 2000 and 2) the need for health education, for greater understanding in the general population.

Health Conditions in the Panama Canal

The health situation here could potentially mirror the rest of Panama. Indeed, it is likely that in the Canal watershed and squatter areas, tuberculosis and enteric diseases could be prevalent. Health status of the Canal area population, however, has not been thoroughly addressed in the documents available to the Panel (8). The Canal Zone was thought to have acted as a barrier to transmission of disease because of the existing preventive services. If those services, such as quarantine, water supply, sewage disposal and treatment, and garbage disposal are not maintained, then certain diseases in addition to the two mentioned directly above could become rampant. For example, Aedes aegypti, the mosquito which transmits yellow fever, dengue fever, Venezuelan equine encephalitis, and filariasis, was found in slums outside of Colon in 1969 (9). The mosquito breeding places were eliminated by Ministry of Health and Canal Zone officials. Malaria is especially widespread in Panama and Colon provinces, bordering the Canal area, and could become important in the area through migration of infected persons (especially from Darien province) (10).

It should be noted that the water supplies in Panama City and Colon City have been treated in the Canal Zone with its limited facilities. However, 100% of Panama's urban population has been supplied with water for many years, though only 54% of rural populations were supplied in 1975 (11). It is unclear how much of the rural population in the Canal area is supplied water of adequate quality. Installation of water supplies has been supported by outside agencies with IDAAN maintenance. It is unclear how IDAAN will work with the Joint Environmental Commission and Coordinating Committee.

All waste disposal projects have been in urban areas and even those need improvement. For example, "the sewers in Colon were built in 1908 and are currently undergoing a necessary reconstruction" (12). There was a decline in sewage services in Panama from 87% of the urban population being served in 1970 to 78% in 1965 (13). How services will be maintained in the Canal area also needs to be addressed in more detail.

An additional factor associated with indirect effects of treaty implementation include questions of nutrition and maintenance of food supplies in the area, especially with regard to population growth in the Canal area due to migration and natural rate of population increase. Panama's population generally suffers from an inadequate diet, it is unclear what the general situation is in the Canal area.

Health Resources in the Canal Area

Questions of resource availability for allocation to the Canal area remain. The availab ility of skilled manpower to take over from United States agencies' activities has not been addressed nor has the question of funding availability for many of the maintenance activities which may have high recurrent costs.

Furthermore, the coordination of the Panama Canal Authority with other government agencies has not been discussed in detail. Although the government of Panama has stated that the responsibilities to meet the treaty obligations "have committed the country to undertake its own organized, preparatory efforts to adjust and prepare its administrative structures before the treaty goes into force" (14). For example, although the Gorgas Institute has been funded for 5 more years, it is unclear how its services will be used in the future. Thus, a clearer picture of manpower, management, and monetary resources available to the Canal area would assist in evaluating what the possible environmental impacts of treaty implementation might be. Furthermore, the relationship of existing Panamanian laws to responsibilities under the treaty needs to be discussed. The effectiveness of enforcing laws, especially with regard to food handling, garbage disposal, water pollution, and immunization needs to be evaluated.

Further Information

Evaluation of the health and sanitation impacts associated with implementation of the Panama Canal Treaty requires some additional information to that presented in available documents. Although general health status information on Panama as a whole is available, specific data about the Canal Zone and watershed areas were not presented.

The following list summarizes the areas of needed information:

1. Health status of Canal Zone and Watershed population
    - causes of mortality (including infant mortality)
    - causes of morbidity
    - prevalence of different diseases (number or fraction of population infected with different diseases)

- death rates
- birth rates
- existence of disease vectors
- nutritional status of population

2. Maintenance of health and sanitation services in Canal Zone and watershed area
    - coordination of Panama Canal Authority and government agencies
    - role of Gorgas Institute
    - enforcement of existing Panamanian legislation and need to develop new legislation

Recommendations

Panama is fortunate to have a highly literate population with established government and private agencies providing a variety of social services. With the Panama Canal Treaty, new resource demands will be placed on the people of Panama and their institutions. The following recommendations are suggested to assist in meeting those demands.

Foremost is the need to ensure maintenance of existing health and sanitation services in the Canal Zone and watershed areas. Tourism will also benefit from such services. Such maintenance requires more managers and possibly technicians to assume responsibility for services run by American personnel. It is likely that there are personnel in Panama who are eligible for additional training in management. A major strength of U. S. Agency for International Development (AID) is in the area of training, especially in planning, management, and evaluation. AID, under the auspices of the Panama Canal Authority, could take the lead in providing programs for Panamanians with specific emphasis on needs in the Canal area.

The second major concurrent need is to know what the health status is of the different populations in the Canal area. Epidemiological and demographic surveys need to be undertaken to assist planners in meeting future health needs. This requires a coordinated effort by in-country institutions, possibly a joint effort by the Panama Canal Authority, Gorgas Institute, and Ministry of Health, and could be supported in part by AID and Pan American Health Organization.

Thirdly, monitoring of migrants into the area needs to be implemented. The potential disease threats from the construction of the Pan-American Highway are great for the entire country. The Canal area may require special attention since it may attract new and possibly infected migrants. The Panama Canal Authority, in coordination with the Ministry of Health, could work on this problem, possibly with support from private, voluntary organizations who might be working with migrant populations.

It would be especially instructive to review the results of the Egyptian running of the Suez Canal since 1956 to see how effectively a country can manage such efforts. Although the initial circumstances were quite different between Egypt then and Panama now, the successful managing of the Suez Canal by Egypt should indicate what is highly likely to occur in Panama.

The provision of all services in the Panama Canal area requires commitment on the part of the countries involved. If the questions raised above are addressed with determination and support, Panama can ensure a continued healthy, environmentally sound implementation of the treaty.

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9. Woolley, et al., op. cit., p. 23

10. Ibid., p. 37-38.

11. World Health Organization. 1976. " World Health Statistics Report: Special Issue Community Water Supply and Excreta Disposal in Developing Countries Review of Progress." vol. 29, no. 10, p. 573.

12. Woolley, et al., op. cit., p. 22.

13. World Health Organization, op. cit., p. 577.

14. Barletta, et al., op. cit., p. 136.

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1950

September 11, 1978

Mr. Peter A. Johnson
Oceans Program
Congress of the United States
Office of Technology Assessment
Washington, D.C. 20510

Dear Peter:

In response to the request in your letter of August 23, 1978 I enclose herewith my list of highlights from the August 10-11 Panama Canal panel meeting.

I appreciated very much the invitation and hope that the result will get the U.S. off dead center.

Sincerely,

Frank H. Wadsworth
FRANK H. WADSWORTH
Project Leader

Enclosure

cc: AD-E, SO

D-54

Highlights from Panama Canal Panel, 8/10-11/78

Most of the highlights of the Office of Technical Assessment panel meeting concern matters that can better be articulated by other participants, or are clear on the tape record. Presuming that I was included primarily because of the related forest problem, I will emphasize these points.

1. Early direct and day-to-day communication with those representatives of the Panamanian government being appointed to deal with the environmental problems is of primary concern. Critical environmental values, long in jeopardy, are in danger of rapidly accelerated destruction within the coming months. What is needed is much more than a routine "call me" attitude on the part of the Panama Canal Company or its successor. We saw evidence that there are some Panamanians at least as concerned with this problem as we are. There is urgent need to field a team now (interim if need be) to assess the problems jointly and set up priorities for the Joint Commission and stopgap action until it becomes effective.

2. The protection of the Canal, including its watershed, must become fully supported from Canal tolls. There were indications that tolls are currently obligated for other purposes and "might not be available" of "would have to be increased to the detriment of traffic". Neither of these considerations can be allowed to shelve basic protection of the Canal as if it were not an integral cost item. Protection of the watershed is as direct an everyday responsibility of Canal operation as is dredging (and more so than community amenities in the zone). We were told that toll charges (now some $180 million annually) could be increased 30 percent without significant loss in traffic. The protection of the watershed is as continous and long-range a consideration as the Canal itself, and tolls, which rise with inflation are the proper and only secure source of support therefor. Protection so supported will constitute no burden to the Government of Panama when it takes over the Canal and thus should have an excellent prospect to continue indefinitely.

3. Protection of the Canal watershed requires a power base within the Government of Panama. It cannot be accomplished unilaterally by the United States. This means that such financial support as is needed for this function must be channeled from Canal tolls to an agency of the Government of Panama, making possible the training and maintenance of an effective cadre of employees with career security. The United States might assist in the development of this agency but ultimately such assistance would be ancillary to its operation.

4. Protection of the Canal watershed means the prevention of any further deforestation and the allowing of deforested steep slopes to revegetate naturally. It need not require artificial reforestation, roads, or other forms of development.

5. Development of the Canal watershed, while potentially instrumental in its protection, must be recognized as distinct therefrom, and need not be financed from tolls. Development is concerned with gainful employment and social services for the population of the watershed. It could involve improvement of food and forage crop production, the production of timber crops, processing of crops, marketing facilities, and other employment opportunities. The population of the watershed, if it is to be well supported, will need the benefit of all of these activities. Ideally these functions might be assigned to the same Panamanian agency which that provides protection, thus strengthening the power base and coordination of all activities within the watershed. The overall program would need international assistance, at least at the outset.

6. A rational plan for land use in the watershed is basic to its future. Classification of the lands by their capabilities (ecological preserves, soil and water conservation, timber production, pastures, food crops, urban) must precede any program to develop the watershed. A start has already been made by AID, but needs full Panamanian participation and commitment.

7. Intensification of farming is a primary employment opportunity. The use of better crop varieties, fertilizers, soil conservation and cultivation practices should be able to increase yields several fold and thus employment per acre. Markets are not distant. Well trained agronomists will be a key to progress in this direction.

8. Sustained forage, dairy, and beef production are possible in much of the watershed. This use is proper for most of the areas that need not remain tree-covered. Again improvements in forage species, breeding stock, and other practices require technical support.

9. Much of Panama's foreseeable timber requirements might be produced from within the watershed without jeopardizing its protection. Panama's present and prospective consumption of timber products (lumber, paper products) come from softwoods rather than the native types of trees. Pinus caribaea is adapted to the poorer lands of the watershed. Its production would provide soil protection and employment, particularly in processing products for the nearly markets. If planting begins promptly and systematically Panama would have a resultant timber industry before the Canal treaties are terminated.

10. Other specialty tree crops should prove adapted to parts of the watershed. Examples are citrus fruits, coffee, and cabinet woods, including native timber species. These could be tested experimentally in mixture with other forms of agriculture to determine their compatability as a supplementary source of income.

11. The Panamanian's stipulation that development must accommodate the entire present population of the Canal watershed will probably call for more than agriculture and forestry as sources of employment. In community centers light industries would have to be attracted. This may not be too difficult, since the distance to the local market is not great. Production of apparel might be one possibility.

12. The current AID loan proposal should be used to accomplish the most urgent needs, particularly watershed protection. If it can develop the needed power base and establish a going program of watershed protection and development it may play a crucial role while the Joint Commission gets under way. Nevertheless, the availability of US loan funds and of Panamanian willingness to commit itself for repayment is too precarious a foundation for the continous protection of the Canal watershed. That function should, as soon as practical, get into the more secure Canal toll budget.

D-57

The Nature Conservancy

1800 North Kent Street, Arlington, Virginia 22209
(703) 841-5300

December 8, 1978

Mr. Bennett L. Silverstein
Project Director
Office of Technology Assessment
United States Congress
Washington, D. C. 20510

Dear Ben:

First, allow me to compliment you and your colleagues of OTA for the receptive and candid manner in which you conducted the project concerning environmental issues relating to the Panama Canal. I believe all the participants felt their views were sincerely sought and carefully considered. If any issues were neglected, it must be our responsibility for missing the opportunity which OTA presented.

The environmental issues raised by the Ad Hoc Panel of experts and the sub-panel are well represented in the Findings of the Draft Report on the Environment of the Panama Canal and the appendices provide additional information, consensus views and areas of disagreement or uncertainty. Rather than repeat those points I will confine myself to several general, rather subjective, observations particularly concerning the Joint Commission on the Environment (JCE).

In theory, I feel most environmentalists would like the JCE to have strong (perhaps even binding) regulatory power. In practice, this is not possible and may not even be desirable. It is much more important, in my view, that the JCE have broad jurisdiction (physically and in subject manner) than that its decisions or studies have a binding effect.

The jurisdiction of the JCE under the treaty could range from "the natural environment of the Republic of Panama" in any way that it is impacted by the Treaty implementation to the narrow operational area of the Canal and even in that area only on those issues brought directly to it by both governments. Which view of jurisdiction prevails is likely to depend upon whether the JCE is viewed as attempting to improve and protect natural values in Panama or as a guise to impose particular actions on Panama. I feel the U.S. should to the extent possible abandon firm binding decisions or regulations and seek instead commissioners who act without instructions and a commission which can initiate its own studies over the whole range of relevant environmental issues which might arise anywhere within the Canal watershed.

To summarize these points, I feel the jurisdiction (at least by informal agreement) should cover the Panama Canal watershed and any environmental issues arising therein. The governments should initially provide it with a

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broad brief to initiate, review and report on an extensive subject matter. The commissioners (a total of 6) should act independently and be of highest quality. To accomplish this, they must have recognized credentials sufficient to inspire confidence in their integrity, competence and objectivity. The decisions, conclusions or recommendations should be public but not binding.

I concur with the view that the International Joint Commission-Canada-U.S., with modifications, is the most relevant model for the JCE. The use of advisory panels and access to gaining experts on subvension from other government agencies are particularly important. This will allow a smaller core staff for the JCE, smaller budget and greater range of expertise. Not only should the commissioners themselves not be instructed by their governments, it is equally important that loaned experts remain independent, technical people and not be "instructed" by their own agency. Furthermore, the loan of such experts and other in kind service is another way for Panama to help share support of the JCE without utilizing its scarce cash reserves.

I feel there is another important model for the JCE in the U.S. Council on Environmental Quality (CEQ), particularly in its responsibility for periodic (annual?) review of environmental aspects of the Treaty. The reporting requirement can play a terribly important function. Neither CEQ nor the IJC have responsibility to implement recommendations of their studies, nor should the JCE.

There are several issues on which I am of two minds. Concerning funding of the JCE, my initial view was to look to canal tolls particularly being aware of the financial constraints of Panama (and increasingly here at home as well). After careful thought however, I now believe that the need to find financial support that does not jeopardize the JCE's objectivity (in reality or appearance) outweighs the financial difficulty (particularly if the JCE can meet a good part of its financial needs with people loaned from other agencies and in kind services). This type of semi-transient staff will make the importance of a top caliber core staff all the more critical. The leadership of a knowledgeable director, an individual such as Dr. Paul Campanella for example, will be particularly important as I feel all six commissioners should be half-time. The second issue is the proper role of Smithsonian Tropical Research Institute (STRI) (and Gorgas Memorial Laboratory) in relationship to the JCE. STRI provides a tremendous resource of knowledge not only for the U.S. but potentially to the JCE. My initial view was that their advisory role be formalized, perhaps serving as non-voting members of the JCE. It is important that knowledge exist at the time when issues are being formulated by the JCE. On the other hand, this role carries the risk that it might create at least the appearance of politics which STRI has so deftly avoided in the past. This is further complicated by the lack of any equivalent totally Panamanian institution (although STRI has a stronger bilateral character than is generally recognized). My conclusion is that STRI should be a much utilized resource but with the relationship to be developed between the JCE and STRI staffs in the future.

Finally, in visualizing the longer term goal of the JCE it seems important to abandon the all too commonly held view of environmental issues as being primarily negative in nature. The role of JCE is not to stop any particular activity but rather to try to protect and preserve existing values, to prevent needless loss, and to moderate damage if it is unavoidable. The proper role of JCE in considering environment and development issues might be based upon the definition of mediation offered by Gerald W. Cormick, Director of the Office of Environmental Mediation at the University of Washington:

> "Mediation is a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediator has no authority to impose a settlement. His or her strength lies in the ability to assist the parties in resolving their own differences. The mediated dispute is settled when the parties themselves reach what they consider to be a workable solution."

Unlike a mediator, the JCE does have, by definition, a mandate to protect the environment; however, it will operate to its full potential if it is able through fact finding, analysis of alternative courses, transfer of new technologies, and by maintaining a long term perspective to help the parties concerned with the Panama Canal develop environmentally sound workable solutions. In reality, to be meaningful the JCE is a way in which we in the U.S. can cooperate to help protect areas of great environmental and social value for the world but areas which are ultimately the responsibility of Panama. This is the opportunity and the challenge of the JCE.

Two final observations relate to immediate needs between now and the October implementation of the Treaties. First, if it can be done without preempting Congress, the sooner talks can begin in Panama on formation of a JCE (or an interim working committee) the better. Second, a large number of us have been greatly impressed with and compliment AID for the creative energy AID has put into struggling with the environmental issues involved with the Panama Canal Watershed project. It is no criticism of that plan to say that it will be unable to deal with the immediate invasion and continual cutting of the zone. Neither will it be able, in this time frame, to relocate the illegal squatters. As the Draft Report states, the squatters "present [Panamanian] officials with complex socio-economic issues." They also present the U.S. government (including both the U.S. Army as the present "tenant" licensee and the Canal Company) with similar issues and a special recently neglected responsibility. Unless the responsibility is forthrightly accepted by the U.S., many of the issues which should be the province of the JCE will be moot.

Thank you again for your patience and the many opportunities we had to discuss these matters with you. I look forward with genuine pleasure to working with you and OTA in the future.

Sincerely yours,

R. Michael Wright
Director and General Counsel
International Program

RMW:cvj

APPENDIX E

SUMMARY OF SELECTED BRIEFINGS

SUMMARY OF MEETING WITH DR. PAUL CAMPANELLA,
JRB ASSOCIATES, JULY 14, 1978

Dr. Campanella has over 8 years professional experience in Panama and has worked for the Smithsonian Tropical Research Institute, the Gorgas Memorial Institute, and the U.S. Government. He was recently employed as the Environmental Officer of the Panama Canal Company. In May 1978 he participated in the AID Watershed Management Planning effort.

The Canal Zone contains about 550 square miles, but the watershed that supplies the Panama Canal has about 800,000 acres. The Gatun Lake is an area about 8 percent of the total watershed. Madden Lake (Lake Alajuela) is about 1-2% of the watershed.

About 52 million gallons of fresh water, with no recovery, is needed for each ship transit through the Canal. About half goes into the lockage.

Based on some maps, Dr. Campanella showed the loss of forests in the watershed over the past 23 years. For example, the Chagres Watershed was almost total forest in 1952, but by 1972 about 23 percent had been deforested, and by 1976 nearly 42 percent was destroyed. The Canal Watershed west of the Canal has been almost completely denuded of trees. This is principally due to slash-and-burn agricultural methods, but a small lumber industry adds to the problems. Panama has several very small reforestation efforts which have had little impact in the watershed.

About 65 percent of the Panamanian population (1.2 million) live in the cities of Panama and Colon. About 400,000 people live in the interior of the country. Unemployment is as high as 25-35 percent in some areas of the country.

Traditional shifting agriculture follows a typical pattern throughout Latin America—small-scale farmers move to the edge of the forest, slash and burn a few acres of land to plant subsistence crops and farm this area for about 2-3 years. This activity exhausts the soil fertility, and the farmers move to a new site and repeat the process. Traditionally, the land was left fallow for 5-6 years until it regained some of its natural fertility. However, there is growing pressure on the land from a large number of itinerant laborers who cannot find work in the city and from cattle ranchers. The fallow period is shortened, and in many instances cattle are grazed on the already impoverished land resulting in further destruction of the soil.

Panama has recently experienced several years of low rainfall (1976-1977). This has resulted in a diminished level of water available for ship transits. In May 1977, the Canal dropped its draft to a historic low of 36.5 feet, and it is possible that some ship transits were lost due to the water shortage. Recently, the rainfall has increased significantly.

Dr. Campanella expressed his views regarding land use in the Canal Watershed. Initially, he would ban the use of land with a slope greater than 45 percent. The rest of the land would be examined with respect to fertility, geology, fauna, current usage, etc., and classified for use according to this appraisal. Agricultural activities should no longer encroach into the existing forests. Reforestation should begin on appropriate sites with native species in the Gatun and Chagres areas.

Panama has accepted the idea of creating parks and preserves to protect the forests, and the government has passed good legislation to protect the environment. However, there is almost no enforcement of these laws, and the top level of the government seems not to have made a total commitment yet to save the remaining forests. RENARE is the Panamanian agency within the Ministry of Agriculture that is nominally responsible for preservation of the environment.

No one owns any land in the Canal Zone. When the land reverts to Panama on October 1, 1979, the Government of Panama will own all but a very small area along the Canal itself.

Dr. Campanella deplored the possibility of total deforestation, but felt that, even under the extreme condition, the Canal could still be operable for the next 50 years, but at much greater costs and with reduced ship transits per year.

The Pipeline Road area is a biologically rich lowland tropical forest that has been the site of numerous scientific investigations and which provides habitat for about 15 rare or endangered species of animals.

Although a great deal has been said about the Canal Zone as an effective barrier to North-South disease transmission (i.e., hoof and mouth disease, yellow fever), Dr. Campanella feels that this idea has been overemphasized. In addition, he felt no reason why Panama could not continue to maintain this barrier.

Dr. Campanella believes that ecologically sound land management must be started to ensure the rational development of Panama's resource base. Such a program might cost as much as $5 million per year to operate.

He recommended the following as good sources of information:

Ira Rubinoff
Bob Otto
Nick Smythe
Gene Morton
Mike Wright
Tom Lovejoy
Petro Galindo

He had no recommendations of faculty at the University of Panama.

E-4

Summary of Meeting with Ira Rubinoff, Smithsonian,

on 19 July 1978

Dr. Rubinoff spoke to P. Johnson, P. Adler and B. Silverstein, on his views on environmental problems affecting the Panama Canal.

He believes there is no clear policy by the various U.S. agencies with respect to the environment in Panama. The Pipeline Road area has been designated as a reserve; it is leased by the U.S. Army. However, lots of burning of the forest is occurring there, and the U.S. Army should have prevented this. There may well be political motivations for this inaction in light of the Treaty negotiations.

AID is planning about a $10 million project to reforest the waterhshed area. This project is not clearly well-thought out in terms of Panama's forest situation. It is particularly important to save the existing forest, which is unique in that it consistsof many species which have adapted well over the past decades. It will be very expensive to extend this type of forest; in fact, it's not really understood how to do this. New species, or forestation with a single species, though better than nothing, are not really suitable for Panama.

The Smithsonian will continue to operate in Panama, with an annual budget of about $2 million.

By January 1979 the forests may well be in a critical condition. Dr. Rubinoff showed some recent photographs of extensive, new inroads into the forests in the Canal Zone. He believes that the extent of the forests has an effect on weather, in particular the rainfall, but has no hard data.

He had some ideas about the proposed Joint Commission on the Environment. The operation should not depend on canal revenues. A well-operated Commission should cost the U.S. less than a million dollars a year. He sees a maximum of six commissioners will a small full-time staff of four or five.

There are more species of birds in Panama than in the U.S. and Canada combined. Tourism for this alone could become substantial. There is an incredible number of plants there. Panama is an excellent and convenient place for biological research. Now there is one botanical garden and a small zoo.

E-6

Summary of Telcon with Dr. Meredith Jones, Smithsonian

on 19 Sept 1978

Dr. Jones believed that the two major environmental problems are related to the slash-and-burn farming, and the oil refinery near Colon. (This conclusion came after we said that we were not discussing the sea-level canal or a third lock).

He hoped no one was considering pumping seawater into the Canal in periods of water shortage.

He recommended that an excellent contact in Panama for expertise on Marine life would be:

Carlos Arellano

Director-General de Recuersos Marinos

Operatado 6286

Panama 5, Panama

Dr. Jones seconded a suggestion by Dr. Robins (in testimony before Congress) that Panamanian ecologists should be trained. Spanish-speaking U.S. experts might be the appropriate teachers, teaching in Panama not at a U.S. university.

Summary of Meeting with Tom Constant, Panama Canal Company

on 13 July 1978

Mr. Constant briefed P. Johnson, P. Adler, B. Silverstein on various aspects of the Panal Canal.

He recommended our reading of testimony of John Sheffey, who chaired the Atlantic-Pacific Inter-Ocean Commission which examined, in 1970, a sea-level canal.

Mr. Constant noted that a great deal of siltation takes place in the Chagres; dredging is virtually continuous. The Culebra Cut imposes a limit on traffic, for instance no passing at night for large ships. The 500' width is planned to be increased to 600'. Present draft limit is 39'-6". At this time, about 3 Alaskan tankers per day traverse the Canal.

At this time the Canal Company controls the ports in Panama. On October 1, 1979, the Treaty assigns the ports and the railroad to Panama. The Panama Canal Company will change to the Panama Canal Commission, and will continue to to run the Canal through 1999. The Canal Zone disappears, as such, on 1 Oct. 1979. The new Commission will have a Board of Directors, the Chairman selected by the President of the U.S.; five members will be American and four will be Panamanian.

The U.S. has no control over the watershed that supplies water to the Canal. There are many squatters who slash-and burn the trees and then plant crops. The forests are diminishing in size. Now there is not enough water to provide for 17,000 ship transits/year. There are plans to dredge the Gatun Lake Channel. At this time there is no re-cycling of the water, and no ocean water is used for ship transits.

There are industrial pressures in Panama to increase available water supplies for non-canal use. A water management study has been completed.

Mr. Constant noted that key personnel are the pilots. Currently 229 are from the U.S., and 3 are Panamanians. They must have a Master's License and, until recently, also required a U.S. Coast Guard license. There is an apprentice program to develop Canal pilots, but very few are Panamanians.

Dr. Frank Morris, of the Canal Company, is in charge of environmental matters in the Canal Zone. There are requirements for hunting and fishing licenses in the Zone. The Canal Company has made a number of environmental assessments, including the effects of a new power transmission line, and the introduction of new fish into the lakes. The white amur is a fish that should eat aquatic weeds, and trout has been emplaced to enhance recreational fishing. Mr. Constant is not aware of any archeological study that might be underway or planned in Panama.

He said that the Smithsonian Tropical Research Center will continue to function.

Panama is currently conducting a census of the squatters.

He recommended two ex-governors of the Canal Zone who could give a good picture of operation of the Canal: Bill Carter and David Parker.

Public health matters are under tight control now. Mr. Constant is concerned about the future. There is almost no malaria now. Hoof-and-mouth desease exists on the South American side of the Canal.

He recommended, as a Panamanian who is very knowledgable in socio-economic matters, George Westerman, the Panamanian ambassador to the United Nations.

The major industries in Panama are bananas and fishing (particularly shrimp). In the future, possible crops include mangos, coffee and oranges. Another item of great future potential is copper mining.

For information on wildlife, he recommended we contact the Panamanian Audobon Society, in Colon.

E-11

Summary of Telcon with Dr. Howard Sanders, Woods Hole

on 19 Sept 1978

Dr. Sanders said that the extensive slash/burn farming activity in Panama may cause severe soil errosion and consequent danger to land and marine biota.

He particularly expressed opposition to any pumping of seawater into existing lakes or fresh water supplies. The existing barrier to mixing of marine life afforded by the canal should not be altered.

He further stated that oil pollution is a potentially great danger to the waters around Panama.

E-12

Summary of Telcon with Dr. Richard Robins, U. of Miami

on 19 Sept. 1978

Dr. Robins said that fresh water is a valuable resource; it is a shame to waste it on transiting ships. He is not convinced that pumping salt water into the canal would be bad. A trade-off study would be useful, considering that the pumped seawater might help preserve the water table in the highlands.

He is not terribly concerned with marine life transiting now through the canal. Marine life that abound in muddy regions are quite similar on both sides of the canal; clear water fish are different, but seem not now able to go through the canal.

Dr. Robins sees no environmental crises for marine life now in Panama. He is worried by the slash/burn tactics. He believes that the present method of lightering tankers through the canal is dangerous; a pipeline across the isthmus should be safer.

He recommends a training program in Panama for Panamanian scientists, businessmen, government employees, etc. on protection of the environment.

Spanish-speaking U.S. scientists would be appropriate lecturers.

E-14

Summary of Meeting with Amb. Robert Blake and Cynthia Mackie, Natural Resources Defense Council, Inc., 22 Sept. 1978

Ambassador Blake is now heading a Canal Zone Environmental Task Force, composed of a number of environmental organizations.

At our meeting, Amb Blake emphasized the urgency of the environmental problems of the Panama Canal. The primary need is for early decisions on land management. The forests, particularly those in the present Canal Zone, are subjected to slash-and-burn agriculture. The Pipeline Road Forest and the Madden Forest Reserve are in the need for immediate and continuing protection. Now is the time, while the U.S. still has considerable influence in the area, for the U.S. and Panama to commit to a plan and implementation. The farmers living on fragile or irreplaceable lands should be stopped now from cutting and burning trees, as well as grazing cattle. Illegal squatters about 100 families, should be re-located. Incentives to get off and stay off delicate lands must be in the form of immediate compensation to the farmers and re-employment in re-forestation activities are vital.

The U.S. has resources in the area (scientists, boats, etc.) which will diminish in the near future. We should quickly provide Spanish-speaking scientists to work in the field on agriculture, re-forestation, etc.

The time is now to commit the resources of Panama and the United States. Congress should take a close look at all the procedures, and ask hard questions to ensure that proper environmental protection takes place. It is important that the U.S. provides continuing material incentives to the Panamanians to help them maintain a sensible resource development policy. We should now urge top-level officials of Panama to adopt such a policy

Amb. Blake recounted the excellent conservation performance of Costa Rica. Lessons learned from them are possibly applicable in Panama.

He further presented some ideas on the proposed Joint Commission on the Environment. All of Panama should be eventually considered by the JCE. The Canal watershed extends far into Panama, and is not only vital for the Canal but also provides potable water for Panama City. Financial support of the JCE should be in part from tolls and in part from U.S. and Panamanian appropriations. Further, any AID loans should be separate from the JCE funding.

Amb. Blake believes strongly that it is in the U.S. interests to preserve/improve the environment of Panama. We need the Canal to be open and operating, the forests play an important role in the world's ecology, and any animal or human disease in Panama poses a threat to U.S. health. It is also in our best political interests for Panama to have a solid and flourishing economy, which in turn requires a healthy environment.

APPENDIX F

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The CHAIRMAN. Dr. Challinor, we are happy to hear your testimony.

STATEMENT OF DAVID CHALLINOR, ASSISTANT SECRETARY FOR SCIENCE, SMITHSONIAN INSTITUTION

Dr. CHALLINOR. I am glad to be here, Mr. Chairman. I have presented a prepared statement; if it is agreeable with the committee I would like to highlight that statement orally.

The CHAIRMAN. Yes, we will place your entire statement in the record at this point, and you may proceed.

[The following was submitted for the record:]

STATEMENT BY DAVID CHALLINOR, ASSISTANT SECRETARY FOR SCIENCE, SMITHSONIAN INSTITUTION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today on behalf of the Smithsonian Institution, and to delineate our interests in the pending legislation to implement the Panama Canal Treaty of 1977.

A major element of the Smithsonian Institution is the Smithsonian Tropical Research Institute (STRI), which is located on the Isthmus of Panama and is the Nation's primary center for basic research in tropical biology. The Institute's goals are to conduct advance studies in the biology of tropical marine and terrestrial organisms and to increase and diffuse knowledge of their ecology, behavior, and evolution. In addition to fundamental research, STRI has a responsibility for promoting education and conservation in the tropics. It operates a library with the most comprehensive collection in Central America of books and journals on tropical biology, and maintains a series of field stations on both the Atlantic and Pacific coasts of the Isthmus, as well as the world-famous biological area at Barro Colorado Island.

Barro Colorado Island was formed when the Chàgres River was dammed in 1914 during the construction of the Panama Canal to create Gatun Lake. In 1923 a group of scientists successfully petitioned the Governor of the Canal Zone to reserve an area in the Zone for scientific research. The largest island in Gatun Lake, on which a 3,600 acre reserve and research station was established, subsequently was put under the supervision of the Institute for Research in Tropical America, a unit of the National Research Council.

Barro Colorado acquired a worldwide reputation as a tropical field station, and publications about its flora and fauna made it one of the best known pieces of real estate on earth. This, in turn, made it valuable for further research, and in 1940 Congress authorized the President to establish Barro Colorado Island as the Canal Zone Biological Area, a separate agency under a board of directors that included the Secretaries of War, Agriculture, and the Interior; the Secretary of the Smithsonian Institution; the President of the National Academy of Sciences; and eminent biologists. Under Reorganization Plan No. 3 of 1946 the functions for the Board of Directors of the Canal Zone Biological Area were transferred to the Smithsonian Institution.

In 1977 the valuable nature of Barro Colorado Island was further recognized by both United States and Panamanian negotiators of the Panama Canal Treaty who chose to protect its future status and to increase the area available for the protection of wildlife. The Smithsonian Tropical Research Institute has been designated by both governments as custodian of the Barro Colorado Island Nature Monument, and an agreement pursuant to Article VI of the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere has been signed by both nations.

It is anticipated that under the terms of the Panama Canal Treaty the scientific mission of the Smithsonian Tropical Research Institute will remain unaltered. It has been guaranteed the continued use of its laboratories and offices on the mainland, and both of the governments concerned support its unique and important efforts. This was clearly established by the agreement signed on January 5, 1977, between the Minister of Health of the Republic of Panama and the Director of the Smithsonian Tropical Research Institute, and was reaffirmed by the subsequent incorporation into the Treaty of two exchanges of notes and an agreement.

Implementation of the Treaty will require some adjustments by STRI, particularly in the areas of administration, personnel management and compensation, and protection of the extended area of the Barro Colorado Island Nature Monument. At the same time the scientific expertise available at STRI may be a valuable resource for implementation, particularly with respect to the activities of the Joint Commission on the Environment and the possible feasibility study for a proposed sea-level canal or a third lane of locks.

It is expected that the Barro Colorado Nature Monument will be composed of the Island itself and the surrounding peninsulas. Negotiations are currently underway between STRI, the Department of Defense, and the Republic of Panama to delineate the exact boundaries of the Monument which will encompass an area of tropical lowland forest that is an unique preserve for conservation, environmental education, and research, as well as an invaluable example of an extremely important natural environment. The inclusion in the Nature Monument of peninsulas on both the east and west banks of the canal, adjacent to Barro Colorado Island, does, in effect, provide stepping stones across the lake for organisms migrating between North and South America.

The Isthmus of Panama is the bridge between North and South America where the floras and faunas of the two continents meet and mix. The environment reflects this richness and complexity, and is a desirable place to conduct research in tropical biology and to introduce students to tropical ecology. It attracts students and scientists from many institutions throughout the U.S. and around the world because of its ease of access and the relative economy with which a student can be brought into intimate contact with the tropical forest.

It is important to understand the tropics for a variety of reasons, among which is the fact that this region contains the most rapidly growing segment of human population, and tropical peoples are now changing their environment at an unprecedented rate. We must understand the complex ecological interactions of tropical forests if we are to mitigate man's increasing impact on these unique habitats and preserve a reservoir of genetic diversity for future generations.

In addition, the tropics contain more species of animals and plants than any other region on earth. For example, there are more species of birds in Panama than in all of the United States and Canada. Indeed, most of the birds inhabiting North America in the summer are migrants from the tropics, merely using the north for nesting.

The flora and fauna of Barro Colorado Island are particularly rich in species and typical habitats that used to be elsewhere in Panama. The island contains approximately 1,300 species of vascular plants, and certain species of mammals and birds that are hunted elsewhere are abundant on Barro Colorado Island. There are about 465 species of land vertebrates recorded from the Island; 310 species of birds (some 200 species breed there), 65 species of mammals, 58 species of reptiles, and 32 species of amphibians.

Under the Treaty and its annexes, STRI will administer the Nature Monument, and in so doing will continue to provide the fencing, posting, and security force necessary to protect the environment; maintain the trails and boat channels to allow access to the Nature Monument; manage the biological station on the Island by providing lodging, laboratory space, and logistical support for visiting scientists and naturalists; and offering environmental interpretation services for visitors.

The present population of Panama is 1.88 million people. The annual growth rate is 3 percent, so that the population projection for the year 2000 may approach 3.6 million, double the present figure. In the area covered by the watershed of the canal, the growth rate is estimated at more than 5 percent, a rate that may increase as agricultural lands in other parts of the country become progressively overworked.

In a recent survey of agricultural activity in the Canal Zone—and it cannot be too strongly emphasized that the Canal Zone represents only a small part of the watershed basin—it was determined that there are currently 1,053 farmers supporting an additional 3,917 dependents. Land licenses were issued to people who originally came to work on the construction of the canal. The licenses were non-transferrable and non-inheritable, and the last was issued in 1924. Thus, one can surmise that most, if not all, of the lands currently worked for agriculture in the Zone are without legal bases. The task of protecting wild lands, especially the Nature Monument, from further human encroachment will continue to be a major one.

The key to our custodial responsibilities for the Nature Monument and to our continuing research and educational functions is, of course, our employees.

At the present time Federal positions at the Smithsonian Tropical Research Institute are part of the Canal Zone Merit System. Implementation of the Panama Canal Treaty of 1977 will merge the Canal Zone Merit System into an interim Panama Canal Employment System (PCES) under the Panama Canal Commission, the successor to the Canal Zone Government and the Panama Canal Company. The Commission and its employment system will cease to exist after the year 2000.

The Institution plans to continue its scientific, educational, and conservation functions well beyond the year 2000. It is, therefore, essential that we take a long-range view and devise an employment system consistent with our continuing role in the Republic. Certainly that system must be in conformance with the outlines of the proposed implementing legislation, and based on the understanding that our mission is one of conservation and research, and not of canal operation.

In seeking a long-term solution that will permit the uninterrupted conduct of our research activity at STRI, consideration must also be given to its international status and to the international composition of its staff. While STRI maintains its base in Panama, research pursuits take its staff all over the tropics, and require the employment of tropical research specialists from around the world.

A flexible system that will insure our ability to attract and compensate high caliber personnel and maintain a level of excellence in tropical research will, we believe, most appropriately, serve the needs of STRI and its employees now and into the next century.

Another aspect of the pending legislative proposals that is of interest to the Smithsonian is the Joint Commission on the Environment.

We would recommend that the Joint Commission on the Environment have three members from each Nation and that one member from each Nation be a scientist with a strong environmental background. Consideration should be given to staffing for the Commission. A full-time staff including an executive secretary, scientists, technicians, and secretarial support could provide the ability to monitor environmental activity within the Treaty area. In addition, the Chairman of the Joint Commission on the Environment might be invited to attend meetings of the Panama Canal Commission in order to have the earliest possible notice of proposed projects which may have an environmental impact.

In addition, the Commission should be authorized to contract for environmental studies of both terrestrial and aquatic habitats and for projects related to canal improvements. It should also have the authority to appoint ad hoc scientific and engineering advisory groups when additional advice and review might be beneficial in making recommendations to both nations, and to publish freely its findings and recommendations.

We believe that funding for the Joint Commission on the Environment should be derived from sources other than tolls. The possibility of arranging joint financing by the United States and the Republic of Panama would seem a useful avenue to explore.

A final point, Mr. Chairman, is the matter of a possible feasibility study for a proposed sea-level canal. As you may recall we addressed this issue before the Subcommittee in June, 1978. Because we continue to have strong views on the significance of the ecological aspects of such an undertaking, we would reiterate some of the key points made last year.

The ecological effects of a sea-level canal are, we believe, inevitable, and will affect the human population as well as the freshwater and marine flora and fauna. We believe that the greatest impact, however, will be on the marine environment.

The ultimate evaluation of the results of mixing the waters and the biota of both oceans might only be done when all appropriate surveys have been made and species identified. The crucial point of departure, heretofore absent in reports and speculations about the effects of a sea-level canal, is a complete biological base line survey. Everything that follows—all of the natural history observations, all of the behavioral and physiological experiments, all of the predictions and speculations—must be founded upon a firm taxonomic base.

We must know the ecological requirements of species in their present, normal environment.

We must know how plants and animals of a given locale interact to form communities.

We must know which plant and animal species are hosts for which parasites, and which disease-causing organisms affect which species.

We must know their life cycles and the limits under which they can survive, and finally we must compare the plants and animals of the Atlantic with those of the Pacific.

Only when all of this is done, can proper assessment of the possible environmental effects of a sea-level canal be made.

The Smithsonian strongly urges the initiation of a biological and hydrographic survey; the analysis of the collected data and materials; the pursuit of detailed ecological studies; and the carrying out of experimental research to determine tolerances, behavioral responses, and genetic similarity of the marine biota on each side of Panama. We also believe there must be concomitant terrestrial studies of all potential canal sites, including thorough inventories of plants and animals, to evaluate the potential environmental impact of excavations.

If neither the sea-level canal nor a salt water modification of the existing canal is carried out, the proposed surveys still will be valuable in explaining how two different marine biological communities have evolved during the 3–5 million years they have been separated by the isthmus. Furthermore, such practical results as the identification of new and potentially valuable seafood species may be uncovered.

Any biological survey is a very slow process, and a bare minimum of at least five years must be allowed to develop data and inventories in order to make valid predictions of the ecological consequences of a sea-level canal or of major alterations to the present structure.

With respect to the matter of costs, it is currently estimated that funding for the Smithsonian Tropical Research Institute will have to be increased. A request for an additional $377,000 has been included in the Smithsonian's fiscal year 1980 budget justification. Some of this additional funding will be applied to Barro Colorado Island.

It may be recalled that the Act of July 2, 1940, which established the island as an independent entity, included provision for an annual appropriation of $10,000. In October 1965, the limitation was changed to $350,000 in order to permit development of its facilities.

In both the 94th and 95th Congresses legislation to raise the limitation further was introduced. In the 94th Congress the Senate approved raising the amount authorized to $600,000 but no action was taken by the House. In the 95th Congress this subcommittee and its parent approved an amount of $750,000, as did the Senate, but the measure failed on a suspension vote in May, 1977.

At its meeting on January 22, 1979 the Board of Regents approved draft legislation to raise the limit to $750,000 and it is expected that the Smithsonian's congressional Regents will introduce the measure in the very near future. The continuing need for improvements on Barro Colorado Island, as well as current and anticipated increases in costs of materials and services, have brought extraordinary pressure to bear on the existing limitation.

We look forward to discussing the matter further at a later date. For now, Mr. Chairman, I shall be happy to respond to any questions you and the Members of the Subcommittee may have.

Dr. CHALLINOR. I just want to outline first the basic purpose of the Smithsonian Tropical Research Institute in Panama. This is an institute consisting of about 20 scientists who are concerned with basic research in tropical biology, in studying such things as what might happen to the so-called African killer bees, which swarm north from South America. They would have to pass through the Panama area, the Isthmus, and on north, and our scientists are studying what could be done now to slow that growth or even stop it. They are also doing studies on howler monkeys, why they get yellow fever, the kinds of yellow fever they do get, and if this is a danger to man.

In addition, we have various education programs for the local people in Panama dealing with the tropical forest and the necessity to conserve that very valuable resource. The facilities of the Tropical Research Institute of the Smithsonian are primarily located on Barro Colorado Island, which is about 10 miles square, the largest island in Gatun Lake, and two marine facilities, one at the Pacific end of the canal, and one at the Atlantic end of the canal.

In 1946, under Reorganization Plan No. 3, the former Canal Zone Biological Area was transferred to the Smithsonian. And since then the Smithsonian has come to Congress and has received appropriations to manage that area.

In 1977, during treaty negotiations, the Smithsonian Tropical Research Institute was designated by both the U.S. and Panamanian Governments as custodian of what is to be called the Barro

Colorado Nature Monument. This was done pursuant to Article VI of the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which was signed during Roosevelt's administration by both countries.

In addition, in January 1977 an agreement between the Ministry of Health of the Republic of Panama and the Smithsonian was signed which guarantees the Smithsonian the use of its own labs and offices throughout the Republic, plus certain details, such as the waivers of duties on the imports of scientific equipment, permits to do research work in the field throughout the Republic, and certain other benefits that would be necessary for us to maintain our operation there.

We anticipate that the Smithsonian scientific mission will not be changed at all by the terms of the treaty, and we expect to go on doing our research long after the year 2000.

Implementation of the treaty, will require some adjustment in how the Smithsonian operates its facility there. For example, we will need some changes in the administration, as we will no longer enjoy certain benefits that we had heretofore enjoyed, such as postal service, customs service, immigration assistance that we received from the U.S. Government.

In addition, there will be some changes in our personnel management and compensation policies and, finally, when the Treaty is implemented, the responsibility of the Smithsonian to protect the Nature Monument, to which I have just referred, will increase the land that we will have to patrol. In addition to Barro Colorado Island, four adjacent peninsulas on the mainland will be assigned to the Smithsonian to patrol against poachers and squatters which is important to protect the watershed of the canal.

We are particularly interested in the pending legislative proposal that will create, if it is approved, a Joint Commission on the Environment. This will be very important if the watershed of the canal is to be protected. We have a number of recommendations, which I have spelled out in my formal statement, but I would like to outline them here,

We strongly recommend that on this Joint Commission for the Environment three members from each country be appointed, with one of those three members a scientist or someone with a strong environmental background,

We also recommend that this Commission have a full-time staff and that the Chairman of this Joint Commission on the Environment be invited to attend meetings of the Panama Canal Commission when they are held, so that there will be notice of the decisions of the Panama Canal Commission as they would affect the environment.

The Commission, we also suggest, might have contract authority to make environmental studies and authority to publish the findings of these studies, free from any impediment.

And, finally, we recommend very strongly that the Commission be funded independently of toll revenue.

The Smithsonian continues to be very interested in the feasibility studies of the proposed sea-level canal, about which I testified before this committee previously. We feel this is a very important study to be done, and we will continue, on a very small scale, the work that we are now doing on that area.

Finally, we do anticipate that the Smithsonian operation in Panama will require increased finding when the treaty is implemented. We have requested from our appropriations subcommittees in both the House and Senate for fiscal year 1980 $377,000—new dollars.

We also would like to point out to this committee that we are seeking an increase in our existing ceiling for Barro Colorado Island. From 1946, when we were given authority to operate that area, until 1965, the ceiling was $10,000; in October 1965 it was increased to $350,000; and now, 14 years later, we find that this ceiling is causing us considerable financial problems in carrying out our responsibilities on Barro Colorado Island.

We will be asking this committee for approval to increase that ceiling to $750,000. This has been approved by the Smithsonian Board of Regents, and we will be prepared to testify, when appropriate, about why we think this is a proper ceiling for us.

And that, Mr. Chairman, highlights of my testimony,

The CHAIRMAN. Thank you, Doctor.

I do not believe you discussed the question of the sea level canal.

Dr. CHALLINOR. I just mentioned, Mr. Chairman, that this is an area in which we would like to do a great deal more research than we are doing and, should funding be available, we are ready to go on and increase the very modest work we have been doing in this direction.

The CHAIRMAN. I have been down and visited the Smithsonian over the years, and particularly back in the period when we were studying the sea level interoceanic canal, and found very extensive the work that was being done.

Dr. CHALLINOR. We have been doing this. At that time, about 6 or 7 years ago, we were able to get a partial funding from the Army Corps of Engineers on a total grant of about $100,000 that went to the National Academy of Sciences. A considerable portion of this helped fund the research that we were doing.

The CHAIRMAN. On the membership of the Commission, you say one scientist from each country?

Dr. CHALLINOR. That is our recommendation; either of a scientist or of somebody with a strong background in the environment.

The CHAIRMAN. You would not limit it to one, though?

Dr. CHALLINOR. Would not limit it to one. That is at least one, Mr. Chairman.

The CHAIRMAN. In your testimony regarding in the Joint Commission on the Environment, would you explain the rationale behind proposing that funding be from sources other than tolls?

Dr. CHALLINOR. In this way, Mr. Chairman, we feel there would be less likelihood of the Joint Commission on the Environment being limited to the exact operation of the canal itself. We feel that keeping the Joint Commission on the Environment as independent as possible from the operation of the canal should insure its independence of operation.

The CHAIRMAN. The Panama Canal Authority told us last Saturday in Panama that they were going to expand Barro Colorado area by about four times. Their scientists indicated that the island was not large enough to support certain species that are in the area. Would you comment on that?

Dr. CHALLINOR, Yes, Mr. Chairman. If I may, I can point out the areas that are of concern on the adjacent map here.

[At the map:] Barro Colorado Island, is located right here. There will be added to the Barro Colorado Nature Monument four adjacent peninsulas, this large peninsula here, and three peninsulas here. One, two, three. These three peninsulas, which are attached to the mainland—in other words, they are contiguous with the area—would serve as a considerable buffer zone for the animals and birds and insects that live on Barro Colorado, and would allow the natural migrations.

This is a relatively short area over here for larger animals, such as deer, who can certainly swim across, and would allow the migration of animals back and forth. And this would be an important protection for the preserve on Barro Colorado, which has existed since the Chagrès Dam was built and closed in 1914.

The CHAIRMAN. Mr. Bauman?

Mr. BAUMAN. Doctor, the addition of those peninsulas, is that what we were told about by the Panama Canal Authority, which is the Panamanian transition group?

I think the gentleman from Michigan, Mr. Bonior, asked about the island and its status, and the status was unclear to me when the answer was given by one of the Panamanian officials, who said that there were plans to expand areas close to the island through some sort of arrangement under the Panamanian Government. Is that what you are talking about?

Dr. CHALLINOR. That is exactly what I am talking about, Mr. Bauman.

I might point out that the negotiations for the exact areas of these peninsulas have not been firmly established yet. All our understanding with authorities in Panama is that they will indeed be part of the new national park, or nature monument, under the terms of the 1940 treaty.

Mr. BAUMAN. You do not see any problem with that eventually succeeding?

Dr. CHALLINOR. We see no problem, Mr. Bauman, as far as our colleagues in Panama are concerned. They have agreed that this is an important area, particularly for the protection of the watershed on the canal and to keep the canal from silting up.

Mr. BAUMAN. Well, I would just say I certainly want to add my voice to the support for the continuation of the work you are doing. The only concern I have is about your suggestion that the Joint Environmental Committee be financed from something other than tolls. I think a strong case can be made for the financing of your operation, as it has been in the past. But the Joint Environmental Committee has a great many other duties associated with the watershed of the canal and other environmental matters. It seems to me that, if we are going to be constant with the administration guarantee that the financing of this treaty come from tolls, it would be difficult to place that general Commission operation in a special status.

Dr. Challinor. Well, as I mentioned, this was merely a suggestion, a recommendation on our part, to keep the Joint Environmental Commission as independent an organization as possible.

Mr. Bauman. Thank you.

The Chairman. Mr. Carney?

Mr. Carney. The agreements that the Smithsonian has with the Panamanian Government, I guess the last one is in 1940; is that correct?

Dr. Challinor. Well, in 1946 the Smithsonian was given the authority to operate Barro Colorado Island. The last agreement that we have signed was with the Ministry of Health under whom the Smithsonian's research facility, I believe, would operate after the year 2000.

Therefore, we sought permission from this particular ministry, and the agreement was signed with the ministry on the 5th of January, before the treaty had been signed. This was a separate agreement with the ministry to prepare ourselves for future operations after the year 2000 in the canal, to get a complete understanding of what our rights and obligations were, to assure ourselves of free access to field research facilities in the Republic of Panama, and to import scientific instruments without duty. We have similar agreements with a number of other countries already; namely, Colombia, Tunisia, and various other places where we have field stations.

Mr. Carney. Is there a time frame on the agreement? Or is it indefinite, to extend past the year 2000?

Dr. Challinor. The agreement we have now with the Minister of Health has 5-year renewable options, up to the year 2000. With 1 year's notice, either party legally, under the agreement, could cancel the agreement,

That agreement runs, as I say, to the year 2000. We do not anticipate any problems of renewing it after that, but the existing written agreement covers just to the year 2000.

Mr. Carney. Do you have any idea what the financial impact would be with the addition of the four peninsulas to the island land mass?

Dr. Challinor. The main financial impact will be the added cost of patrolling that additional area. It would probably require three or four more wardens, and maybe one more outboard motorboat, which the wardens now use to patrol the island itself.

Mr. Carney. Certainly there would be no need for construction or any type of capital investment in those areas, would there?

Dr. Challinor. No. As a matter of policy, we would very firmly be opposed to the development of those islands, and we would plan to do everything we could to keep them as natural areas under the terms of the 1940 treaty.

Mr. Carney. Your request for $750,000, would that take into consideration the expenses of the additional land?

Dr. Challinor. The additional land, Mr. Carney, is separate from our ceiling authorization on Barro Colorado. That applies only to the island of Barro Colorado itself, which is the headquarters of the Tropical Research Institute field station there.

At that field station we have 4 acres cleared with living quarters and laboratory space for the scientists who work there. The maintenance and operation of that facility has increased to the point where $350,000, which was adequate in 1965, is now really squeezing us. These are such expenses as buying diesel oil for the generator out there and the maintenance of the buildings, which are continually attacked by termites, as you can understand.

Mr. CARNEY. Thank you.

The CHAIRMAN. What has been the relationship between the Smithsonian and its staff with the Republic of Panama?

Dr. CHALLINOR. We have enjoyed very good relationships. We have one Panamanian Ph. D. scientist on our staff now. We have a number of undergraduate students from the University of Panama who work at the laboratories of the Smithsonian in Panama, and have, as a matter of policy, encouraged this for a very long time. I would anticipate in the next decade or more an increasing participation by Panamanian scientists on the staff of the Smithsonian Tropical Institute itself.

So, to date, we have enjoyed very good relations with the Republic, and particularly with the scientific community, which, as you can imagine, is a rather small one, and we know most of them on a very personal, first-name basis.

The CHAIRMAN. Thank you very much, Doctor.

We are now ready to move to our next witness.

We are very privileged today to have with us the Director of the Office of Personnel Management, Dr. Alan Campbell. As most of us know, Dr. Campbell was a distinguished and renowned political scientist before his assumption of his present post. Today, he himself comes forward to speak for his agency and its views on treaty implementing legislation.

Dr. Campbell and I were elected delegates to the New York State Constitutional Convention about 11 years ago, and we personally participated in passing out what was probably one of the finest constitutional documents in the history of man. And when it was presented to the people in a referendum, you can imagine its fate—probably the same fate that would have conferred had the Panama Canal Treaties been presented to the same forum.

Dr. Campbell, we are certainly happy to have you with us today.

STATEMENT OF DR. ALAN K. CAMPBELL, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY THOMAS A. TINSLEY, DEPUTY ASSOCIATE DIRECTOR

Dr. CAMPBELL. Thank you very much, Mr. Chairman. It is a pleasure to be here.

I am accompanied by Mr. Tom Tinsley, who runs the Federal Retirement System, since many of the provisions in both bills relate to that retirement system.

You do have a prepared statement from me, and what I would like to do, with your permission, is to have that placed in the record, and then highlight the most significant parts of the legislation as it relates to employment guarantees to employees regarding retirement.

And in doing that, I would like to read from the record, because it is fairly complex, and I want to make sure I get it right.

The CHAIRMAN. Well, without objection, we will follow that procedure.

Dr. CAMPBELL. Thank you very much, sir.

[The following was received for the record:]

STATEMENT OF ALAN K. CAMPBELL, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman and members of the subcommittee, I am happy to be here today to testify for the Office of Personnel Management on this very significant legislation.

The Panama Canal Treaty of 1977 and Related Agreements were signed by representatives of the United States and Panama on September 7, 1977, subject to ratification by both Governments. The Treaty has been approved and the effective date for the exchange of instruments of ratification will be April 1, 1979. Six months later, on October 1, 1979, the Treaty will enter into force and remain in effect through December 31, 1999. Beginning October 1, 1979, the United States will carry out its responsibilities in Panama through a United States Government agency called the Panama Canal Commission. The Panama Canal Commission will replace the Panama Canal Company and the Canal Zone Government both of which will cease to exist at that time.

Under the Treaty many of the activities presently performed by the United States will be transferred to the Republic of Panama and many present Federal employees will lose their Federal jobs. The Republic of Panama will undoubtedly employ some of these individuals to continue with the transferred activities especially those who are citizens of Panama.

The Treaty will bring about a major transition. The United States will relinquish jurisdiction in a zone within a foreign country in which it has exercised authority since 1904. Employees who have served the Canal have done so on the assumption that they would spend their entire working lives in this employment. This may no longer be possible.

Employee organizations, understandably, had great interest in Treaty negotiations as they affected their members. Provisions were sought in the Treaty to protect the benefits of employees affected by the changeover. The Administration agreed that such protection was justified because of the unique situation faced by these employees. Article X of the Treaty, therefore, contains provisions relating to conditions of employment with the Panama Canal Commission. Article X also requires the United States to provide an appropriate early optional retirement program and to seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities for these employees, than is currently provided by law.

Both Chairman Murphy's bill, H.R. 111, and the Administration's bill, H.R. 1716, contain very similar provisions for implementing Article X of the Treaty.

It may be worthwhile at this point to recount a bit of the history of the present Panama Canal Zone employment system and our relationship to it.

During the construction period and up until 1955, United States and Panamanian citizens who worked in the Canal Zone were covered by separate employment systems. U.S. citizens were paid on the U.S. wage base with a 25 percent tropical differential. They were also exempt from U.S. income tax. Non-U.S. citizens, including a large number of West Indian nationals, were paid a local prevailing wage rate. This distinction also was maintained in terms of access to housing, recreational and sanitational facilities. This system came to be known as the "gold and silver rolls" since originally U.S. citizens were paid in gold and non-U.S. citizens in silver coinage.

Pursuant to a 1955 treaty between the United States and the Republic of Panama, Congress enacted Public Law 85-550 in 1958 which provided for the establishment of a Canal Zone Merit System for Federal employees of the Panama Canal Zone. This new merit system was required by Treaty and law to (a) be based solely on the merit of the employee and (b) be applied uniformly to all employees irrespective of whether they were citizens of the U.S. or the Republic of Panama. The Treaty and law continued to authorize differentials and tax allowances for U.S. citizens. The Panama Canal Treaty of 1977 continues the principle of no discrimination on the basis of nationality and allows additional remunerations for persons recruited outside of Panama, thought this is no longer limited to U.S. nationals.

Effective January 19, 1959, positions in the Canal Zone were excepted from the competitive service and placed under the new Canal Zone Merit System.

The Canal Zone Merit System is a self-contained personnel system with regard to such employment matters as appointment and promotion. Nevertheless, the Office of Personnel Management (formerly, the Civil Service Commission) has the following responsibilities in connection with the Canal Zone Merit System.

1. To make a periodic review of its operation for conformity with Public Law 85-550, Executive Order 10794, and the regulations issued by the Secretary of the Army. Under this authority, the Civil Service Commission performed two comprehensive evaluations of the Canal Zone Merit System, the first in 1969, the second in 1971.

2. To provide for the non-competitive movement of personnel between the Canal Zone and the U.S. competitive service. Accordingly, the Civil Service Commission entered into a personnel interchange agreement with the Canal Zone Government by which an employee under the Canal Zone Merit System with one year of service can move noncompetitively into the competitive service of the United States.

3. To nominate one member and an alternate to Canal Zone Board of Appeals. Canal Zone Merit System employees can appeal the classification of their jobs to the Canal Zone Board of Appeals, of which the Civil Service Commission/Office of Personnel Management member is traditionally the chairman. (However, the Board is not an instrument of the Office of Personnel Management and its decisions, while final, do not represent official decisions of this Office.)

Finally, it should be noted that Canal Zone employees who are veterans have appeal rights to the Merit Systems Protection Board (formerly, to the Civil Service Commission) by virtue of other laws.

Beyond these responsibilities, the relationship between the central personnel agency and the Canal Zone is generally based on requests for technical assistance and or on the central personnel agency's general responsibility for Federal personnel matters.

Both bills provide that the present Canal Zone Merit System and relative administrative regulations will apply to Commission employees until such time as the new Panama Canal Employment System provided for in the bills has been established.

Both bills provide for a collective bargaining system generally paralleling the labor relations program of title VII of the Civil Service Reform Act. H.R. 111, however, would have the collective bargaining system apply to all U.S. agency employees in the Republic of Panama rather than only to Commission employees. We would defer to the views of the interested agencies and employee organizations in this matter. There does not however, appear to be any compelling reason for not applying title VII of the CSRA directly to all U.S. citizen employees in the zone except for employees of the Commission.

Both bills require appropriate placement assistance for U.S. citizen employees separated or scheduled to separate during the life of the Treaty. In line with this we have developed a priority placement program for U.S. citizen employees in the Canal Zone. We believe that this program provides the maximum possible placement assistance to these persons while at the same time protecting the rights of other displaced employees and minimizing the restrictions to agency personnel management programs. We have issued a Federal Personnel Manual Letter which explains the program to agencies.

Under the program there are two placement priority levels of employees. Priority level 1 consists of U.S. citizen employees of the Panama Canal Company, Canal Zone Government and other agencies in the Canal Zone who are involuntarily separated as a direct result of the implementation of the Panama Canal Treaties. Priority level 2 consists of those U.S. citizen employees of the Canal Zone Government and the Panama Canal Company in the Canal Zone who are not being involuntarily separated but who desire to leave the Zone.

When priority level 1 employees are qualified and available for a vacancy which an agency has, the agency must select a priority level 1 employee, or not fill the job. It will not be permitted to fill the vacancy by the appointment of other applicants from either outside or inside the agency.

There are exceptions where a statute, for example, requires an agency to select a former employee who is returning from military service and who is entitled to restoration rights.

When priority level 2 employees are qualified and available for a vacancy which an agency has, the agency may not appoint an applicant from the outside ahead of a priority level 2 employee. However, the agency would be permitted to fill the position with one of its own employees. This differs from the consideration which priority level 1 employees receive because, as I stated above, the availability of priority level 1 employees prevents the agency from filling a vacancy with employees from the outside or with its own employees. We believe that there should be this difference in placement assistance because priority level 1 employees are facing the imminent loss of their jobs, and priority level 2 employees are not. Priority level 1 and 2 employees will register for up to five occupational categories for which they qualify. They will be permitted to register for assistance in any 2 of the 10 regions of the Office of Personnel Management, or in 1 region and Washington, D.C. They will be entitled to assistance at their former grade (excluding GS-16 and above) and all other lower grades which they are willing to accept.

Employees will receive assistance for 1 year but will be removed from the program sooner if they locate a continuing Federal position or decline an offer which they had indicated would be acceptable.

Office of Personnel Management area offices will have the primary responsibility for the day-to-day operation of the placement program. The area offices will periodically publish lists of series and grades for which Canal Zone employees are available. Agencies having vacancies in these series will be required to contact the area offices which will provide the applications of the displaced employees. The agency must select a displaced employee in accordance with the restrictions which I have described. If the agency believes that a displaced employee is not qualified for the position, it must present evidence to the area office, and only the area office will be authorized to remove a displaced employee from consideration on the basis that he does not qualify the position.

In developing this program, we were very concerned that other displaced employees throughout the United States not be denied consideration to which they are entitled. Therefore, when Canal Zone employees are registered for the same geographic area and series as other displaced employees, the other displaced employees will receive the same degree of placement consideration as Canal Zone employees. Agencies will be referred Canal Zone and other displaced employees at the same time, and they will be permitted to select from either group.

In response to Article X(10)(a) of the Treaty, and the request of the Panama Canal Company, the Office of Personnel Management authorized early optional retirements under Public Law 95-454 for employees of the Panama Canal Company and Canal Zone Government. This authorization extends from April 1, 1979, through September 30, 1979, and applies to all employees with at least 25 years of service at any age and to employees with 20 years of service at age 50. Employees who elect early optional retirement under this authorization will have their annuities reduced by two percent a year for each year under age 55. We had no authority to change this provision. We do not expect that many employees under age 55 will take advantage of this authority but will wait for implementing legislation to be enacted.

Both H.R. 111 and H.R. 1716 contain liberal eligibility requirements for, and special computation of annuity for the retirement of Federal employees in Panama. Although these provisions are liberal we believe they are justified because of the unique circumstances and because of the need to protect the interests of the United States in Panama. To do this we must retain trained employees so that the transfer of all remaining functions to the Republic of Panama will be accomplished gradually throughout the life of the Treaty without major problems or disruption of services.

After months of effort, coordinated by the Army Department, and involving staff of the OPM, employees and employee organizations in Panama, as well as the General Counsel of the Canal Zone Government, we believe these provisions are required to fulfill the mandates of the Treaty and, at the same time, protect the interest of the United States. Because employees of the Panama Canal Company and the Canal Zone Government will be more adversely affected by the Treaty when those agencies are eliminated, the provisions for them are more liberal than for those employees who are employed immediately prior to April 1 or October 1, 1979, by other Executive agencies in Panama.

Both bills provide that persons employed by the Panama Canal Company or the Canal Zone Government immediately before April 1, or October 1, 1979, including those transferred without a break in service to either the Panama Canal Commission or another Executive agency in Panama, who are involuntarily separated, or scheduled to be separated, during the life of the Treaty, as a result of implementation of the Treaty, will be entitled to an annuity if they have 20 years of Federal service, or if they are at least 48 years of age and have at least 18 years of Federal service. Additionally, during the life of the Treaty, such persons may retire voluntarily after 23 years of service or at age 48 after 18 years of service. On the other hand, any such employee who transfers without a break in service to the new Panama Canal Commission or another Executive agency in Panama on October 1, 1979, and continues working will receive a more liberal computation of annuity (2½ percent of average salary) for up to 20 years of such continuous service after October 1, 1979.

Such employees who are law enforcement officers or firefighters will be eligible for the regular law enforcement computation for up to 20 years if they separate after age 48 with at least 18 years of service.

Additionally, if they continue to serve in Panama without a break in service after October 1, 1979, their annuities will be increased by $8 for each full month of service after that date until they have completed a total of 20 years of law enforcement or firefighter service.

If they separate prior to attaining age 48 and 18 years of such service they will not be eligible for the 2½ percent law enforcement formula for service prior to October 1, 1979 but their annuities when they do retire will be increased by $12 for each full month of service as a law enforcement officer or firefighter in Panama before October 1, 1979. H.R. 1716 and H.R. 111 also provide that persons employed immediately before April 1 or October 1, 1979, by an Executive agency in Panama other than the Panama Canal Company or the Canal Zone Government will be eligible, for an annuity, if involuntarily separated as a result of the Treaty after 20 years service or after attainment of age 48 and 18 years of service. Such persons will not be eligible for voluntary optional retirement at age 48 or after 23 years of service at any age. Furthermore, they will not be eligible for the special computation for continued service in Panama after October 1, 1979. This is because they are employed by agencies which are not confined to Panama and which are not being abolished; therefore, the adverse effect of the Treaty will not be so great on them as on those employees of the Panama Canal Company or the Canal Zone Government.

There will be no reduction in any of the foregoing annuity computations for being under age 55. As I stated before, however, we believe these provisions are required to fulfill the mandated requirements of the Treaty and to protect the interests of the United States in Panama during the life of the Treaty.

With regard to the financing of the cost of these early retirement provisions, there are differences in the two bills which should be noted. The section analysis of H.R. 111 states that the requirement in section 240(a) of that bill that the Commission reimburse the retirement fund for "Government contributions, is not limited to the matching contribution by the agency but would apply to all payments into the Fund by the U.S. Government on behalf of employees of the Commission, including the matching contribution and the addition to the Fund of the early retirement provisions in Chapter 3 of Title I of the bill". As we construe the intent, the Commission would be required to pay the entire cost of these early retirement provisions out of annual appropriations over the 20 years life of the Treaty. The Administration bill does not do this but, provides for automatic appropriations over a 30 year period as authorized by section 8348(f) of title 5, United States Code. This is the preferred approach.

We are not convinced that the technical language of section 240(a) of H.R. 111 would accomplish the stated intent, but assuming that it would, there are certain questions which should be answered. What happens if the Commission is unable to make a payment or a number of payments because Congress fails to appropriate enough money in those years? What is the alternative? Since we would still be obligated to pay the annuities from the Civil Service Retirement Fund, whether or not we were reimbursed, such payments would add directly to the unfunded liability of the Fund since there would be no automatic appropriations to compensate for the payment.

Both bills have provisions concerning Social Security and retirement benefits applicable to employees of the Commission who are not United States citizens. Such employees who transfer to the Commission without a break in service from the Panama Canal Company, the Canal Zone Government, or from another Executive agency in the Republic of Panama, will, if they were covered under the Civil Service Retirement System, continue to be covered by chapter 81 (workers compensation), 83 (retirement), 87 (life insurance), and 89 (health benefits) of title 5, United States Code. These coverages will continue until their retirement or until the termination of their employment for any other reason. Any such non-United States citizen hired, or rehired after a break in service, by the Commission after October 1, 1979, will be excluded from these coverages. Instead, they will be covered from the date of their employment under the Social Security System of the Republic of Panama. The Commission will collect and transfer the employer's and employee's contributions to the Panamanian social security system for such employees.

The Treaty provides special retirement provisions under the Panamanian Social Security system for employees regardless of nationality, who work in Company/Government activities being transferred to Panama. These provisions set up a special regime, identical in eligibility requirements, benefits and employer/employee contributions to the civil Service Retirement System. These provisions assure employees in transferred activities that they will not lose retirement benefits as a result of the transfer.

Any Federal employee who is separated from a covered position with the Panama Canal Company, the Canal Zone Government, or the Commission as a result of implementation of the Treaty, and who becomes employed under the Social Security System of Panama because of the transfer of a function or activity to the Republic of Panama may elect to purchase an equity under the special regime if he meets certain requirements. If the employee has served less than 5 years, he or she may elect to transfer his or her contributions to the Panamanian Social Security for the purchase of an equity equal to the amounts transferred. If the employee has served at least 5 years under the Civil Service Retirement System, is not eligible for an immediate civil service annuity and does not elect a deferred civil service annuity, he may withdraw his contributions from the Civil service Retirement System and transfer them to the Social Security System of the Republic of Panama.

When all these conditions for employees with at least 5 years service are met, the United States is required by the Treaty to make a payment into the Social Security System of the Republic of Panama Equal to the amount withdrawn by the employee and contributed by the employee to the Panamanian Social Security System. Under the proposed legislation, this payment will be taken from the Civil Service Retirement and Disability Fund, since that Fund will have no future obligation towards these employees or their survivors. The transfer of funds was mandated by an Agreement in Implementation of the Treaty, although the source of the funds was not identified.

There is no definite information as to the estimated impact of retirement benefit changes resulting from the Panama Canal Treaty. We have pieced together available information to derive a total picture as stated below. If our knowledge of the facts is not complete, or these facts change, the cost figures will have to be modified.

Information in 1977 had been that the average salary, including tropical differentials for all affected employees covered by retirement, was then $11,600 per person. We have no updated information on salaries, but allowing for the two intervening pay increases, we estimate that the current pay of employees covered by retirement to be $13,000 per person.

According to the Panama Canal Company/Government, they presently have 14,100 employees. They estimate that 5,800 positions in the Canal organization will be affected as a result of the treaty. Of these 5,800 employees, 3,200 will be transferred to the Department of Defense, and 2,600 will be separated from employment by reduction in force. The reduction in force actions will be partially offset by an estimated 1,500 retirements occurring before the Treaty becomes effective October 1, 1979.

Assuming that the treaty implementation legislation passes, the 1,500 employees who are expected to retire will retire under the liberalized retirement provisions of this legislation, instead of under the early optional retirement provisions which OPM has authorized for the period April 1 through September 30, 1979. Since the retirement provisions proposed by the treaty implementation legislation are more liberal than the early optional retirement provisions available under present law, an additional liability of $26 million will be generated by the retirement of these 1,500 employees.

A total of 10,000 employees will be eligible for the liberalized retirement provisions on and after October 1, 1979. After the retirements and reductions in force take place, about 6,800 employees will continue with the Panama Canal Commission. The 3,200 employees who will be transferred to the Department of Defense will also be eligible for the the liberalized retirement. Previous cost estimates made by the Civil Service Commission last year did not include the cost for these 3,200 employees and were, therfore, lower than the estimate we have today. We now estimate that the retirement liability generated by the proposed liberalized retirement provisions for all 10,000 employees who would benefit is $177 million. This does not include the cost for liberalized retirement based on involuntary separation as a result of Treaty implementation for present employees of Executive agencies other than the Company/Government because we have no data on numbers of such employees who might retire.

There are also special provisions proposed for law enforcement officers and firefighters. We are told that there are 600 such individuals. The liability generated as a result of the special provisions for law enforcement officers is $2 million.

The total additional liability for all of the liberalized provisions is $205 million. Under the existing retirement law, this liability would be amortized in thirty equal annual installments of $12.7 million each, paid out of general revenues by the U.S. Treasury. If the Panama Canal Commission were obligated to amortize this cost over 20 years under H.R. 111 the annual payment out of Commission appropriations would be $15.7 million.

The above liabilities do not include the cost of transferring money to the Social Security System of Panama to match the amount of employee contributions which certain separated Panama Canal/Government employees who become employed by the Government of Panama may elect to have paid over to such system. It is difficult to estimate the cost of this provision before it is known for certain how many employees may be involved and how many may actually elect to make a transfer of their own contributions.

The employees to be separated by reduction in force will tend to be younger employees who lack the 20 years of service generally required for early retirement. In separations of this kind, it has been our experience that the majority of separating employees immediately request a refund. Accordingly, we estimate that only about 300 employees, with the required 5 or more years of service, will actually elect to transfer their retirement contributions to the Social Security System of Panama and, thereby, obligate the United States, and, under the proposed legislation, the Civil Service Retirement Fund, to transfer a matching amount.

Therefore, we estimate that the cost of matching retirement contributions transferred to the Social Security System of Panama will not be more than $1 or $2 million. If interest were to be required to be paid on these funds, or if the actual equitable value of the benefits are transferred, as H.R. 111 may require, the cost would be substantially higher.

This concludes my formal testimony on these two bills. I will be happy to try to answer any questions you may have.

Dr. CAMPBELL. Both bills before this committee require appropriate placement assistance for U.S. citizen employees separated or scheduled to separate during the life of the treaty.

In line with this, we have developed a priority placement program for U.S. citizen employees in the Canal Zone. We believe that this program provides the maximum possible placement assistance to these persons, while at the same time protecting the rights of other displaced employees and minimizing the restrictions on agency personnel management. We have issued instructions on this matter.

Under the program, there are two placement priority levels of employees.

Priority 1 consists of U.S. citizen employees of the Panama Canal Company, the Canal Zone Government, and other agencies in the Canal Zone involuntarily separated as a direct result of the Panama Canal Treaties.

Priority level 2 consists of those U.S. citizen employees of the Canal Zone Government and the Panama Canal Company who are not being involuntarily separated but who desire to leave the zone.

When priority 1 employees are qualified and available for a vacancy, the agency must select a priority level 1 employee, or not fill the job. The agency will not be permitted to fill the vacancy by appointing other applicants from either outside or inside the agency.

There are exceptions, where a statute, for example, requires an agency to select a former employee who is returning from military service and who is entitled to restoration rights.

When priority level 2 employees—those who voluntarily separate—are qualified and available for a vacancy, the agency may not appoint an applicant from the outside ahead of this priority level 2 employee. However, the agency would be permitted to fill the position with one of its own employees. This differs from the consideration which priority level 1 employees receive because the availability of priority level 1 employees prevents the agency from filling a vacancy with either employees from the outside or with its own employees.

We believe there should be this difference, because of the difference in the two situations.

Priority level 1 and 2 employees will register for up to five occupational categories for which they qualify. They will be permitted to register for assistance in any 2 of the 10 regions of the Office of Personnel Management, or in one region and Washington, D.C. They will be entitled to assistance at their former grade—excluding GS–16 and above—and at all other lower grades they are willing to accept.

Employees will receive assistance for 1 year, but will be removed from the program sooner if they locate a continuing Federal position or decline an offer which they had indicated would be acceptable.

Office of Personnel Management area offices will have the primary responsibility for the day-to-day operation of the placement program. They will periodically publish lists of series and grades for which Canal Zone employees are available. Agencies having vacancies in these series will be required to contact the area offices, which will then provide the applications of the displaced employees. The agency must select a displaced employee in accordance with the restrictions which I have described.

If the agency believes that a displaced employee is not qualified for the position, it must present evidence to our area office, and only that office will be authorized to remove a displaced employee from consideration on the basis that he does not qualify for the position.

In developing this program, we were very concerned that other displaced Federal employees throughout the United States not be denied consideration to which they are entitled, Therefore, when Canal Zone employees are registered for the same geographic area and series as other displaced employees, the other displaced employees will receive the same degree of placement consideration as Canal Zone employees. Agencies will be referred Canal Zone and other displaced employees at the same time, and will be permitted to select from either group.

Turning to retirement in response to article X(10)(a) of the treaty, and the request of the Panama Canal Company, the Office of Personnel Management authorized early optional retirements under Public Law 95–454 for employees of the Panama Canal Company and the Canal Zone Government.

This authorization extends from April 1, 1979 through September 30, 1979, and applies to all employees with at least 25 years of service at any age, and to employees with 20 years of service at age 50.

Employees who elect early optional retirement under this authorization will have their annuities reduced by 2 percent a year for each year under age 55. This provision is what is currently in the law, and we have no right to change it, We do not anticipate that many employees under age 55 will take advantage of this authority, but will wait for the implementing legislation which this committee is considering.

Both H.R. 111 and H.R. 1716 contain liberal eligibility requirements for, and special computation of, annuity for the retirement of Federal employees in Panama. Although these provisions are liberal, we believe they are justified because of the unique circumstances and because of the need to protect the interests of the United States in Panama. To do this we must retain trained employees, so that the transfer of all remaining functions to the Republic of Panama will be accomplished gradually throughout the life of the treaty, without major problems or disruption of services.

After months of effort, coordinated by the Department of the Army and involving our staff and employee organizations in Panama, as well as the General Counsel of the Canal Zone Government, we believe these provisions are required to fulfill the mandates of the treaty and, at the same time, protect the interest of the United States.

Because employees of the Panama Canal Company and the Canal Zone Government will be more adversely affected by the treaty when those agencies are eliminated, provisions for them are more liberal than for those employees who are employed immediately prior to April 1 or October 1, 1979, by other executive agencies in Panama.

Both bills provide that persons employed by the Panama Canal Company or the Canal Zone Government immediately before April 1 or October 1, 1979, including those transferred without a break in service to either the Panama Canal Commission or other executive agencies in Panama, who are involuntarily separated, or scheduled to be separated during the life of the treaty, as a result of the implementation of the treaty, will be entitled to an annuity if they have 20 years of Federal service or if they are at least 48 years of age and have at least 18 years of Federal service.

Additionally, during the life of the treaty, such persons may retire voluntarily after 23 years of service or at age 48 after 18 years of service.

On the other hand, any such employee who transfers without a break in service to the new Panama Canal Commission or another executive agency in Panama on October 1, 1979, and continues working, will receive a more liberal annuity—that is, 2½ percent of average salary per year of service—for up to 20 years of such continuous service after October 1, 1979.

Such employees who are law enforcement officers or firefighters will be eligible for the regular law enforcement computation for up to 20 years if they separate after age 48 with at least 18 years of service.

Additionally, if they continue to serve in Panama without a break in service after October 1, 1979, their annuities will be increased by $8 for each full month of service after that date, until they have completed 20 years of law enforcement or firefighter service.

If they separate before attaining age 48 and 18 years of such service, they will not be eligible for the 2½ percent law enforcement formula for service prior to October 1, 1979, but their annuities, when they do retire, will be increased by $12 for each full month of service as a law enforcement officer or firefighter in Panama before October 1, 1979.

Both bills also provide that persons employed immediately after April 1 or October 1 by an executive agency in Panama, other than the Panama Canal Company or the Canal Zone Government, will be eligible for an annuity—if involuntarily separated as a result of the treaty after 20 years service, or after attaining age 48 and 28 years of service.

Such persons will not be eligible for voluntary optional retirement at age 48 or after 23 years of service at any age.

Nor will they be eligible for the special computation for continued service in Panama after October 1, 1979. This is because they are employed by agencies which are not confined to Panama and which are not being abolished. The adverse effect of the treaty will not be so great on them as on those employees of the Panama Canal Company or the Canal Zone Government.

There will be no reduction in any of the foregoing annuity computations for being under age 55. As I have already stated, we believe these provisions are required to fulfill the mandated requirements of the treaty and to protect the interests of the United States in Panama during the life of the treaty.

With regard to the financing of the cost of these early retirement provisions, there are differences in the two bills which we perhaps should note.

The section analysis of H.R. 111 states that the requirement in section 240(a) of that bill, that the Commission reimburse the retirement fund for, and I quote:

> Government contributions, is not limited to the matching contribution of the agency but would apply to all payments into the fund by the U.S. Government on behalf of the employees of the Commission, including the matching contribution and the addition to the fund of the early retirement provisions in chapter 3 of title 1 of the bill;

End of quote.

As we construe the intent, the Commission would be required to pay the entire cost of these early retirement provisions out of annual appropriations over the 20-year life of the treaty. The administration bill does not do this, but provides for automatic appropriations over a 30-year period, as authorized by section 8348(f) of title 5 of the United States Code. We think the latter is a preferred approach.

We are not convinced that the technical language of section 240(a) of H.R. 111 would accomplish the stated intent, but assuming that it would, there are certain questions which should be answered. For example, what happens if the Commission is unable to make a payment or a number of payments because Congress fails to appropriate enough money in those years? What is the alternative? Since we would still be obligated to pay the annuities from the civil service retirement fund, whether or not we were reimbursed, such payments would add directly to the unfunded liability of the fund, since there would be no automatic appropriations to compensate for the payment.

Both bills have provisions concerning social security and retirement benefits applicable to employees of the Commission who are not U.S. citizens. Such employees who tranfer to the Commission without a break in service from the Panama Canal Company and the Canal Zone Government, or from another executive agency in the Republic of Panama, will, if covered under the Civil Service Retirement System, continue to be covered by chapters 81, workers compensation, 83, retirement, 87, life insurance, and 89, health benefits, of title 5 of the United States Code.

These coverages will continue until their retirement or until the termination of their employment for any reason. Any such non-U.S. citizen hired, or rehired after a break in service, by the Commission after October 1, 1979, will be excluded from these coverages. Instead, they will be covered from the date of their employment under the social security system of the Republic of Panama. The Commission will collect and transfer the employer's and employee's contributions to the Panamanian social security system for such employees.

The treaty provides special retirement provisions under the Panamanian social security system for employees regardless of nationality, who work in Company/Government activities being tranferred to Panama. These provisions set up a special regime, identical in eligibility requirements, benefits and employer/employee contributions to the Civil Service Retirement System. These provisions assure that employees in transferred activities will not lose retirement benefits as a result of the transfer.

Any Federal employee separated from a covered position with the Panama Canal Company, the Canal Zone Government, or the Commission as a result of the treaty, and who becomes employed under the social security system of Panama because of the transfer of a function or activity to the Republic of Panama, may elect to purchase an equity under the special regime if he meets certain requirements. If the employee has served less than 5 years, he or she may elect to tranfer his or her contributions to the Panamanian social security for the purchase of an equity equal to the amounts transferred.

If the employee has served at least 5 years under the Civil Service Retirement System, is not eligible for an immediate civil service annuity and does not elect a deferred civil service annuity, he may withdraw his contributions from the Civil Service Retirement System and transfer them to the federal social security system of the Republic of Panama.

When all these conditions of employees with at least 5 years of service are met, the United States is required by the treaty to make a payment into the social security system of the Republic of Panama equal to the amount withdrawn by the employee and contributed by the employee to the Panamanian social security system.

Under the proposed legislation, this payment will be taken from the civil service retirement and disability fund, since that fund will have no future obligation toward these employees or their survivors. The transfer of funds as mandated by an agreement in implementation of the treaty, although the source of funds was not identified.

There is no definite information as to the estimated impact of retirement benefit changes resulting from the Panama Canal Treaty. We have pieced together available information to derive as total a picture as possible. As we acquire further facts and as our picture becomes clearer, we will, of course, provide that information to the committee.

Information in 1977 had been that the average salary, including tropical differentials for affected employees covered by retirement, was then $11,600 per person. We do not have updated information on salaries, but allowing for the two intervening pay increases we estimate that the current pay of employees covered by retirement to be approximately $13,000 per year per employee.

According to the Panama Canal Company/Government, they presently have 14,100 employees. They estimate that 5,800 positions in the canal organization will be affected as a result of the treaty. Of these 5,800 employees, 3,200 will be transferred to the Department of Defense, and 2,600 will be separated by reduction in force. The reduction in force actions will be partially offset by an estimated 1,500 retirements occurring before the treaty becomes effective October 1, 1979.

Assuming that the treaty implementation legislation passes, the 1,500 employees expected to retire will retire under the liberalized retirement provisions of this legislation, instead of under the early optional retirement provisions which will be in effect from April 1 to September 30.

Since the retirement provisions proposed by the treaty implementation legislation are more liberal than the early optional retirement provisions under present law, an additional liability of $26 million will be generated by the retirement of these 1,500 employees.

A total of 10,000 employees will be eligible for the liberalized retirement provisions on and after October 1, 1979. After the retirements and reductions in force take place, about 6,800 employees will continue with the Panama Canal Commission. The 3,200 employees transferred to the Department of Defense will also be eligible for the liberalized retirement.

Previous cost estimates made by the Civil Service Commission last year, when we were working on this matter, did not include the cost of these 3,200 employees and were, therefore, lower than the estimate I have today. We now estimate that the retirement liability generated by the proposed liberalized retirement provisions for all 10,000 employees who would benefit is $177 million. This does not include the cost for liberalized retirement based on involuntary separation as a result of treaty implementation for proper employees of executive agencies other than the Company/Government, because we have not data on the number of such employees who might retire. We do not think it will be large.

There are also special provisions proposed for law enforcement officers and firefighters. We are told that there are 600 such individuals. The liability generated as a result of the special provisions for law enforcement officers is $2 million.

The total additional liability for all of the liberalized provisions is $205 million. Under the existing retirement law, this liability would be amortized in 30 equal annual installments of $12.7 million each, paid out of the general revenues of the U.S. Treasury. If the Panama Canal Commission were obligated to amortize this cost over 20 years under H.R. 111, the annual payment out of Commission appropriations would be $15.7 million.

The above liabilities do not include the cost of transferring money to the social security system of Panama to match the amount of employee contributions which certain separated Panama Canal Company/Government employees, who become employed by the Government of Panama, may elect to have paid over to such system. It is difficult to estimate the cost of this provision before we know how many employees may be involved and how many may actually elect to make a transfer of their own contributions.

The employees to be separated by reduction in force will tend to be younger, thereby lacking 20 years of service generally required for early retirement. In separations of this kind, it has been our experience that the majority of separating employees immediately request a refund of their contributions. Accordingly, we estimate that only about 300 employees, with the required 5 years or more of service, will actually decide to transfer their retirement contributions to the social security system of Panama and, thereby, obligate the United States, and, under the proposed legislation, the civil service retirement fund, to transfer a matching amount.

Therefore, we estimate that the cost of matching retirement contributions transferred to the social security system of Panama will not be more than $2 million. If interest were to be required to be aid on these funds, or if the actual equitable value of the benefits are transferred, as H.R. 111 may require, the cost would be substantially higher.

This concludes my formal presentation on these two bills, and I apologize a bit for the detail, but both re-employment rights and retirements are somewhat complicated; and I believe it is in that kind of detail we need to know the impact of the various provisions suggested by both the treaty as well as the legislation which this committee is considering

Thank you very much, Mr. Chairman.

Mr. HUBBARD. [presiding]. Thank you, Mr. Alan K. Campbell, Director of the Office of Personnel Management, for your excellent testimony.

Before the questions begin, permit me a personal word. I regret that I am late. It was caused by a Farm Bureau breakfast, attended by 40 constitutents, who wanted to visit with me. This was their only chance. I appreciate Chairman Murphy presiding in my absence. I appreciate the committee's going ahead.

Permit me please, to introduce briefly five close friends of mine who are constituents from Kentucky, and if they would stand, I would appreciate it.

They are: Mr. Henry Lackey, Henderson; Mr. Welby Hoover, Jamestown; Mr. Hayden Timmons of Louisville and Henderson; Ron Sheets, Louisville; and Mr. Bob Miller, Louisville.

Thank you. They are the ones that enable me to be in Congress. I appreciate your permitting me just a minute to introduce them.

Now, the first question, Mr. Campbell: A newspaper article which appeared not long ago indicated that the civil service retirement fund would transfer to the Panamanian social security system employee's and employer's contributions for certain canal employees who are going to work for the Republic of Panama. The concern is that Panama will be getting twice the share of money that would normally go over in a transfer. Would you clarify this issue for us? I realize you addressed this somewhat on page 15 of your statement.

Dr. CAMPBELL. Yes. For those employees that have over 5 years of service and thereby eligible to have their annuity transferred, the transfer would be both the employee contribution and the employer contribution; 7 percent on each side.

There does remain some issue as to whether there will be transferred any interest accumulation, and, as I understand it, the two pieces of legislation before us differ in that manner.

Mr. Tinsley, head of our retirement system and expert on these matters, assures me that is correct.

Mr. HUBBARD. This was partially answered also in your excellent statement. Many of the DOD employees and their labor representatives in the Canal Zone are asking that the early retirement provisions of the implementing legislation be applied to them as well as the Panama Canal Company, Canal Zone and Government, and Panama Canal Commission employees.

Why are the early retirement provisions restricted to these employees?

Dr. CAMPBELL. Well, we do not see any rationale for providing special early retirement to what are essentially regular employees of executive agencies. The Defense Department has employees all around the world. They are subject to transfer and movement, and the change in Panama does not change the terms and conditions of their employment.

Now, for those who may be involuntarily separated, of course, there are special retirement benefits, both for those who work with executive agencies as well as those for the various institutions involved with the zone.

Also, we are permitting, under our priority 2 category, special placement help for those members of the executive agencies who wish to leave Panama.

So what we are trying to create is a balance between those involuntarily affected by these conditions, and those who wish a voluntary opportunity to opt out.

Mr. HUBBARD. All right, thank you.

We will call on the ranking minority member, Congressman Bauman.

Mr. BAUMAN. Mr. Campbell, I do not think most Americans realize that of the 15,000 employees of the Canal Company in the zone government, about 13,000-plus are Panamanian citizens.

Dr. CAMPBELL. Yes.

Mr. BAUMAN. This is interesting, when you hear the cries about giving back the canal to Panama and so on.

But it has certainly become plain to me that one group of employees, which consists mainly of Panamanian nationals, is the one that is likely to suffer most under this change. And, although I realize there are certain immigration rights given to Panamanians who work for the Canal Company for a certain period of time, have you given any thought to the problem, or has there been any estimate of cost, if the right to emigrate and all of the other rights were given on an equal basis to Panamanian citizens and Americans? Many of the Panamanians that I have talked with there in my two trips have expressed the desire to come to the United States, or to leave at some point, as the American citizens will have that right.

In other words, there should be equal treatment throughout for both.

Dr. CAMPBELL. Yes.

Mr. BAUMAN. And it is a special case that prompts that suggestion.

Dr. CAMPBELL. Yes. It is indeed a special case, and you identify the real problem.

Many of the provisions as they relate to early out retirement and the protection of the civil service retirement system do apply to Panamanians who are U.S. citizens.

However, we have not given special consideration to the issue of immigration and the guaranteeing of jobs to noncitizens. It would be very unusual for that to be done within the Federal civil service system.

Mr. BAUMAN. Could you give us a brief outline of the differences in treatment of the U.S. citizens and the Panamanian nationals? What essential differences and rights accrue under the treaty and the bills?

Dr. CAMPBELL. In relationship to retirement, there are no differences. It is a matter of what category of employee, not citizenship, that applies.

I am going to ask Mr. Tinsley to check me on this, but I do not believe that we are providing employment guarantees to Panamanians for employment by the U.S. Government in the United States in the same way that we are to U.S. citizens.

Am I right about that, Tom?

Mr. TINSLEY. You are right. We allow them the right to emigrate by choice, with no use of the quotas, special quota status, but we do not guarantee them employment.

Dr. CAMPBELL. That is my understanding of how it now applies. In other words, the priority 1, priority 2 system that I explained applies only to U.S. citizens.

Mr. BAUMAN. Well, I would say, Mr. Campbell, that it is a source of concern to me, because many of the Panamanian nationals—and I do not in any way denigrate the rights of the American citizens who work there, because I think they are going to be taken care of in this legislation—are of West Indian origin——

Dr. CAMPBELL. Yes.

Mr. Bauman [continuing]. Of third or fourth generation. They helped to build the canal. I think the figures I have seen historically are about 29 Panamanians helped to build the canal, actual Panamanian citizens at the time it was built, whereas thousands of French, American, and West Indians did.

Now these people who are of West Indian origins have many times been described as an ethnic subgroup, and they are in fact such a group in Panama. In some respects they are even looked down upon or discriminated against, and are at the tender mercies of the Panamanian Government. They are for instance, being forced into Panama's social security system. Many of them have expressed this desire to emigrate to the United States, but they are faced, under the terms of the bill, with no rights as to employment. Maybe you could give the committee an estimate of what the cost of an equalizing factor in this blll would be, because some of us are talking about drafting a section that would address that problem.

Dr. Campbell. We will certainly examine that and provide you with data, and I will also discuss the matter you raised with the other relevant Departments, the Army and the State Department.

Mr. Bauman. I thank you, Mr. Chairman.

Mr. Hubbard. Congressman Bonior?

Mr. Bonior. Thank you, Mr. Chairman. I have no questions. I have not had a chance to examine Mr. Campbell's statement, and if I do have questions I will submit them to Mr. Campbell for the record.

Dr. Campbell. We will be pleased to respond.

Mr. Hubbard. Congressman Carney?

Mr. Carney. Yes. Mr. Campbell, did your agency participate in the creation of the Panama Canal Treaty? Were you involved in that at all?

Dr. Campbell. Well, I am not sure that I would call it participation. When the issues arose about how the employees of the affected institutions were to be treated, we worked closely with the State Department and the Army. And we had discussions with representatives of employee organizations. There emerged from that an agreement among the involved agencies, and we of course were particularly involved in providing cost estimates, because the expertise for that rests with our agency.

Mr. Carney. And then of course you were involved in the administration's bill to implement the treaty as well?

Dr. Campbell. Yes.

Mr. Carney. Did you have those same figures available back in 1976 when you were putting the treaty together, the liabilities?

Dr. Campbell. We had approximate figures. We did not provide an official estimate to anyone at that time, however. Obviously there was always the difficulty of knowing how many people would take advantage of their rights, and even here we give, in a sense, the worse case; that is, the special retirement provisions being used by those eligible.

At that time we were not aware of the special rights to be given to employees of executive branch agencies, other than the institutions of the zone. And therefore we did not have that in our total calculation, but we did have rough estimates as to the cost and they undoubtedly differed from what we have now which are better estimates, but they still remain estimates.

Mr. Carney. Did you pass those estimates on to the administration back in that time?

Dr. Campbell. Well, it is a little hard to say what one means by the administration, since I see us as part of the administration.

Mr. Carney. I am just trying to find out if it was your agency, or the Carter administration who denied the public the knowledge of these figures when they were trying to push the treaty down the public's throat.

Dr. Campbell. The figures that we had were obviously rough estimates, and they remain estimates.

Mr. Carney. They must have been rough, because we were told that there would be no cost. They were extremely rough.

I am just wondering if you—you know, I am trying to pinpoint this, whether you passed it on to the administration, or it was your agency that denied the public these figures.

Dr. CAMPBELL. The various estimates being used at that time all had to be based upon assumptions about the number of employees who would use early out, and that obviously makes a substantial difference.

Furthermore, we were dealing, in one sense, with a normal situation; that is a reorganization, with a reduction in force, and the law already provides for dealing with that.

So the fact is that the estimates that we are providing are estimates based on assumptions of actions that employees are going to take, which may or may not turn out to be the case. But we have outside estimates now. Sort of "worst case."

Mr. CARNEY. Then perhaps you did not make the assumptions back in 1976; would that be fair to say?

Dr. CAMPBELL. At that time it was more difficult, because we did not have as much information then as we have now.

Mr. CARNEY. So then, under those circumstances, you assumed there would be no cost?

Dr. CAMPBELL. We did not assume that there would be any cost of any large magnitude; and we still do not think so.

Mr. CARNEY. And then the administration knew that?

Dr. CAMPBELL. I always have a problem about the administration in this. It was certainly known——

Mr, Carney. So do I.

Dr. CAMPBELL [continuing]. By those of us who were involved in the matter.

Mr. CARNEY. you said that you felt it was not a cost of great significance, is that correct?

Dr. CAMPBELL. Yes.

Mr. CARNEY. Do you feel $205 million is a cost of great significance?

Dr. CAMPBELL. Well, if you examine the total retirement system in relation to the $205 million and the other provisions of early-out retirement for other Federal employees under statutes already in existence, when there are reductions in force, it does not seem major. For example, compared to the closing of a defense base, one is always able to calculate cost because of the size of what we are dealing with, which are very large.

This is not excessively large in relationship to other kinds of reduction in force situations.

Mr. Carney, OK, I can see that. I, myself, feel that $205 million in any relationship, especially when you are talking about taxpayers dollars, is a significant figure; but sometimes——

Dr. CAMPBELL. I do not quarrel with you on that.

Mr. CARNEY. Yes. But I feel that bureaucracy sometimes does not.

Were your figures in 1976 at least around $100 million level? I mean, that is not a significant figure either, but were they at least around that level?

Dr. CAMPBELL. I do not remember.

Tom, do you remember?

Mr. TINSLEY. I would have to check. But you have to remember, Mr. Carney, that during this period an agreement pursuant to a treaty was evolving. As a result, in our working with State and Defense and the Canal Zone people, we were furnishing a variety of estimates based upon different assumptions or different things being considered or discussed by both parties.

Now, we could very well go back and determine at what point we made an estimate based upon what appeared to be, to us at that time, the final treaty agreement and so forth.

At that time, yes, we did furnish estimates to both State and Defense.

Mr. CARNEY. I would like to know exactly when you did furnish those estimates.

Mr. Chairman, I would like that information as quickly as it could be supplied, because I think it is very important. For one, the credibility of your estimates now, you know, apparently they were very inaccurate in 1976, and I do not know how much credibility the American people could put on this picture today in 1979.

Dr. CAMPBELL. We will certainly check on that matter and let you have what information we have. Obviously, at that time we did not have implementing legislation, What we were doing, was dealing with language of the treaty, which is much broader than the later written proposal for implementing legislation.

Mr. CARNEY. Thank you.

Thank you, Mr. Chairman.

[The information to be supplied follows:]

Question. What prior cost estimates has the Civil Service Commission (now the Office of Personnel Management) furnished on bill? Were any estimates furnished in 1976?

Answer. A review of our records show that cost estimates for liberalized retirement for Canal Zone employees were furnished OMB, State and Army Departments in October of 1977. This was at a time when a number of different proposals were under consideration in response to Article X (10) of the Treaty. No cost estimates were made prior to that time, and, therefore, no cost estimates were furnished anyone in 1976.

At that time information from the Defense Department was that there were 12,703 covered employees of whom 3,045 would lose their jobs immediately upon entry into force and 2,352 would be transferred to other U.S. employment. We assumed that there would not be any unusual circumstances affecting the remaining 7,306 employees until the termination of the treaty in the year 2000 when any remaining employees would lose their jobs.

One alternative at that time had proposed that employees remaining with the operation would accrue benefits at the rate of 2½ percent for the next 20 years and 2 percent thereafter. It also proposed that any of the 9,658 employees could leave (voluntarily or involuntarily) after 25 years or after age 50 and 20 years with a full accrued benefit. The added liability for this provision would be $97,000,000 for those remaining and $5,000,000 for the 5,397 who would leave. The total liability of $102,000,000 would be funded in thirty annual installments of $6,300,000 each.

Another alternative had suggested that the above proposal be amended to provide involuntary retirements below age 50 with 20 years of service without a reduction. The cost of the amended proposal would be $104,000,000 for those remaining and $31,000,000 for those leaving.

The total liability of $135,000,000 would be funded in thirty installments of $8,400,000 each.

A third alternative proposed that the above benefits be extended to anyone with 20 years of service at any age. This would add a liability of $114,000,000 for those remaining and $31,000,000 for those leaving. The total liability of $145,000,000 would be funded in thirty payments of $9,000,000 each.

We were also asked what a reduction below age 50 would do to the costs. A 2 percent reduction per year below age 50 would reduce the cost of the third alternative proposal by $16,000,000. Smaller savings would be effected by a reduction in the other proposals.

The final proposal was further liberalized to permit retirement where someone was within 2 years of meeting the age 50 or 20 year service requirements. In February, 1978, we estimated for OMB that the unfunded liability for the final proposal would be $148–$150 million, to be amortized in 30 payments of $9.2–$9.3 million each.

The costs of the final proposal as we now estimate them—$205 million to be amortized in 30 payments of $12.7 million—are higher because payroll cost has increased from $11,600 to 13,000 per employee and because the cost of the liberalized retirement for the 3200 employees who will be transferred to DOD was not included in our prior cost estimates.

Mr. HUBBARD. Many statements by the President and Secretary Vance assured the American people that this treaty would not cost the people anything that would be looked upon now as incorrect, would it not, Mr. Campbell?

Dr. CAMPBELL. Well, I do not, in this regard, pretend to be speaking for the administration, but let me simply say that the costs included here are costs that relate to provisions for dealing with employees who, in some way or another, have rights or have been harmed by particular public action. That would be true if they were employees not in Panama but any place else in the United States, because there is general legislation which provides that kind of protection.

Therefore, to argue that this is additional cost has to be based upon the proposition that any actions taken which impact Federal employees add to the cost of Government in ways that are inappropriate or should not be undertaken. My only point is that the additional costs here are related to attempting to deal with the real problem of Federal employees impacted by public policy.

Mr. HUBBARD. Again, thank you, Mr. Campbell.

Dr. CAMPBELL. Thank you.

Mr. HUBBARD. Terry Modglin, the counsel for our subcommittee, has a couple of questions for you.

Mr. MODGLIN. Just a couple of quick ones, Mr. Chairman.

Dr. Campbell, with respect to the priority placement program, who will pay the expenses of the placement of employees, for priority levels 1 and 2, for those employees who transfer from the Canal Zone to the agencies in the continental United States?

Dr. CAMPBELL. Are you talking about the expenses of running the priority system, or the cost to the employee of moving and so forth?

Mr. MODGLIN. It would be the latter.

Dr. CAMPBELL. The latter? It will be handled by the hiring agency. And——

Mr. MODGLIN. Has there been any—go ahead, sir, I am sorry.

Dr. CAMPBELL. I was just simply going to say that in the same way that if an agency in Denver hired an employee of either another agency or their own regional office in some other part of the country, there are GSA rules and regulations about payment of moving expenses.

Mr. MODGLIN. Has there been any discussion in the administration about shifting the cost of those such transfers to the agency losing the employees, like the Panama Canal organization?

Dr. CAMPBELL. I am not aware of any such discussions.

Mr. MODGLIN. There has been some criticism of the employee benefits package in the implementing legislation as being misdirected because it provides incentives for employees to leave the canal organization and at the same time provide incentive for individuals to stay with the Commission to the year 2000. Would you speak to that particular point and the criticism that has been made?

Dr. Campbell. Our motivation in drawing the provisions here was twofold. One was that of fairness to employees who, through no fault of their own, were being forced to make substantial changes, and we believed that that should be recognized in terms of providing alternatives.

However, more important was to encourage particularly essential employees to remain in their jobs during the transition period. And we became convinced in discussion with the Pilots Association, for example, and other organized employees, that a continuing potential for retirement, a kind of safety net, was what they needed to encourage them to stay.

And I would argue that the provisions here, except for those involuntarily separated, will tend to cause people to remain in their job rather than to take advantage of the retirement opportunity. That was our intent.

Mr. Modglin. There are several references in your statement to the social security system of the Republic of Panama, and coverage by that system triggers certain noncoverage for non-U.S. citizens under various provisions in the implementing legislation. Who is covered, and what is the extent of coverage for benefits of the social security system of Panama?

And if that is not available today, could we have it submitted to us?

Dr. Campbell. Yes; I do not have the answer to that. If Tom does not have it, we will provide it.

Mr. Tinsley. If you are referring to what does the social security system of Panama provide in the way of benefits, we will have to furnish you that information.

Dr. Campbell. Yes; we do not have that.

[The following material was submitted for the record:]

What information does the Office of Personnel Management have on current benefits payable under Panamanian Social Security?

Our staff has been in direct contact with the staff of the Panamanian Social Security System to plan for the special regime in that system identical in eligiblity requirements, benefits and employer/employee contributions to the Civil Service Retirement System which the Agreement in Implementation of Article III of the Treaty requires Panama to establish for former Panama Canal Company/Canal Zone Government employees who become employed by the Republic of Panama. We have learned the following general information about Panama Social Security.

The Panama Social Security program is much like the Social Security program in the United States. It provides for the population generally—including government employees—a health and maternity program, a retirement program, a disability program, and a death benefits program. Under the death benefits program, survivor annunity may be paid to dependent parents, as well as to surviving spouses and children.

Benefits under Panama Social Security are financed through contributions as by employees and employers. Employees pay 1 percent of payroll for health benefits and employers pay 8 percent of payroll. Employees pay 5.75 percent of payroll for retirement, disability and death benefits and employers pay 3.55 percent of payroll. Contributions paid by an employee will be refunded if he or she separates without title to retirement annuity.

Eligibility requirements for normal retirement under Panama Social Security are generally completion of 15 years of service and attainment of age 55 for women and age 60 for men. The amount of the basic monthly pay is determined by dividing the total pay of the five highest paying calendar years from January to December, whether or not they are 12 complete months, by 60 months, selected from the 15 years contributions paid prior to the date of application, or the date of retirement chosen by the employee if he or she files the application in advance. The basic monthly annuity payable is determined by taking 60 percent of the basic monthly pay and adding 1 percent of the basic monthly pay for every 12 complete months of contributions paid by the employee in excess of the first 120 months (10) years of contribution.

Early retirement is available under the Panama Social Security System upon completion of 15 years of service at attaining age 50 for women and age 55 for men. The basic monthly pay and the basic monthly annuity are computed the same as for normal retirement, but the basic monthly annuity is reduced according to age at about 4 percent a year for each year early retirement is prior to normal retirement age.

The maximum monthly annuity payable under Panamanian Social Security is $1,000 per month. The minimum monthly annuity payable is $90 per month.

Annuity benefits under Panama Social Security are adjusted occasionally after retirement to take account of increases in the cost of living. The increases are determined by the Government of Panama and are not tied to any particular rise in the Panamanian Consumer Price Index.

Mr. HUBBARD. Are there any other questions?

Hearing none, thank you, Alan B. Campbell.

Dr. CAMPBELL. Thank you very much, Mr. Chairman.

Mr. HUBBARD. Please remember the requests for information by Congressman Carney, Mr. Modglin and others. Please respond to these requests soon.

Dr. CAMPBELL. We will get it to you as soon as possible.

Thank you very much.

Mr. HUBBARD. Thank you again for your testimony and for answering our questions.

Our next witness is Mr. H. Miles Foy, Attorney-Advisor in the Office of Legal Counsel for the Department of Justice.

Mr. Foy testified before the Committee on Merchant Marine and Fisheries in 1978 along with Assistant Attorney General John Harmon.

Mr. Foy, you have some very important and interesting matters to discuss, and we are anxious to hear your testimony. One of the matters you will be discussing in your statement is U.S. authority during the transition period. Another matter which you will touch upon in response to our written questions will be the provision in implementing legislation which makes a general change in United States Code references to the Canal Zone in various related terms.

A study has been prepared by the American Law Division, Congressional Research Service, relating to both these matters. The study, prepared by legislative attorney Christine P. Benagh is entitled "Effects of the Panama Canal Treaties Upon Provisions of the United States Code."

The committee asked the American Law Division of the Library of Congress to undertake this study because no systematic analysis of the disposition or of the validity of the various code references has been done in the executive branch prior to the presentation of draft legislation for the Senate.

In other words, until this study was done, we had no clear idea of how well section 3 of House bill 111 or sections 2 and 401 of House bill 1716 would adequately protect the application of present U.S. law.

I ask unanimous consent that the CRS study by Christine P. Benagh be placed in the record of these hearings.

Hearing no objection, it is so ordered.

[CRS study follows:]

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EFFECT OF THE PANAMA CANAL TREATIES UPON PROVISIONS OF THE UNITED STATES CODE

After the ratification of the Panama Canal Treaty,[1] the American Law Division of the Congressional Research Service was asked to analyze the impact of the treaties upon the laws of the United States currently in effect in the Canal Zone. This report is the response to that request.

All *United States Code* provisions in effect at the end of the 95th Congress were identified by computer and individually analyzed. The first part of this report addresses the termination of United States jurisdiction in the Isthmus of Panama. Part II briefly explains the classes of statutes effected by the Treaty and the methodology used in determining the effect that the Treaty has upon United States statutes. The final section of the report is composed of five attachments listing every statute which specifically mentions the Panama Canal, the Canal Zone, or the Canal Zone Government. These statutes are listed according to the categories explained in Part II of the report. They have been further divided by subject matter. For each statute there appears the *Code* citation,[2] a brief explanation of the law, and, where appropriate, the reason for the classification.

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[1] Panama Canal Treaty, September 7, 1977, Panama - United States, in *New Panama Canal Treaty: Hearings Before The House Comm. on Merchant Marine and Fisheries on The Agreement in Principle with Respect to the Proposed Panama Canal Treaties of 1977*, 95th Cong., 1st Sess., 1977 [hereinafter referred to as *Hearings*].

[2] All citations are made to the *Code* at the end of the 95th Congress. Many of them have not yet been incorporated in the most recent official version of the *Code*, but where this is the case, they can be located in the *United States Code Annotated* (Supp. 1978) or the *United States Code Congressional and Administrative News*, 95th Cong., 2d Sess. (1978).

I. Jurisdictional Considerations

A central aspect of the Panama Canal Treaty of 1977 is the recognition of the complete territorial jurisdiction of Panama over the Canal, the former Canal Zone, and the operating areas and installations of the Canal.[3] Prior to this treaty, the laws governing these areas were established by the the Canal Zone Government or by the United States[4] in exercise of the territorial jurisdiction granted to the United States in 1936 by Panama[5] under Article IX of the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama.[6]

At international law, "jurisdiction" means the capacity of a state to prescribe or to enforce a rule of law.[7] Jurisdiction may be exercised under five general principles:

--Territorial, based upon the place where the offense was committed;

--National, based upon the nationality or national character of the offender;

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[3] Panama Canal Treaty, September 7, 1977, Panama - United States, art. I, sec. 2, in Hearings, 102, *supra* note 1.

[4] C. Z. Code, tit. 1, § 1 (1963).

[5] *Id.* at § 2.

[6] General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, March 2, 1936, Panama - United States, art. IX, 53 Stat. 1807, 1821; T.S. No. 945.

[7] Restatement (Second) of Foreign Relations Law § 6 (1965).

--Protective, based upon whether the national interest is injured;

--Universality, based upon custody of the offender; and

--Passive, based upon the nationality or national character of the victim.[8]

The Panama Canal Treaty affirms the status of Panama as territorial sovereign of the Canal and surrounding areas,[9] thus Panama has the right to restrict the activities of the United States in this area. As Chief Justice Marshall said:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. [10]

Under the new treaty arrangement, the jurisdictional status of the United States in the Isthmus of Panama has changed in many important respects. Generally speaking, Panama resumes plenary jurisdiction over the former Canal Zone upon entry into force of the Treaty,[11] although the United States retains jurisdiction in criminal cases for offenses committed prior to entry into force of the treaty.[12] Among the most important areas in which the United States has been granted regulatory authority are the operation of the Canal[13] and employment by the Panama Canal Commission.[14] Special provision has been made for a thirty month transition period after entry into force of the Treaty.[15]

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[8] Rivard v. United States, 375 F.2d 882, 885 n. 5-9 (5th Cir.), *cert. den.*, 389 U.S. 884 (1967).

[9] Panama Canal Treaty, September 7, 1977, Panama - United States, art. I, sec. 2, in *Hearings*, 102, *supra* note 1, at 1. *See generally* Vermilya Brown Co. v. Connell, 335 U.S. 377 (1948); Luckenbach Steamship Co. v. United States, 280 U.S. 173 (1930); (1930); David Kaufman and Son Co. v. Smith, 216 U.S. 610 (1910).

[10] The Schooner Exch. v. McFaddon, 11 U.S. (7 Cranch) 116, 136 (1812).

During the transition period, the civil and criminal laws of the United States apply concurrently with those of Panama in the areas set aside for use by the United States.[16] However, the United States courts do not have jurisdiction to hear any new private civil actions after entry into force of the Treaty.[17] For thirty months the United States maintains primary jurisdiction over United States citizen employees of the Panama Canal Commission, members of the United States armed forces, and similar personnel for (1) criminal offenses committed during the transition period in the areas set aside for use by the United States, and for (2) criminal offenses committed prior to entry into force of the Treaty in the former Canal Zone.[18/] Thus, after the end of the transition period, the United States has renounced any jurisdictional claims within the Isthmus beyond those needed to effectuate the Treaty (operation and defense of the Canal). It has effectively repealed the jurisdiction upon which many United States statutes were based, raising the question of the continued judicial enforcement of these statutes.[19/]

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[11] Panama Canal Treaty, September 7, 1977, Panama - United States, art. XI, sec. 1, in Hearings, 109, supra note 1, at 1.

[12] Id. at art. XI, sec. 3, in Hearings, 110, supra note 1, at 1.

[13] Id. at art. III, sec. 1, in Hearings, 103, supra note 1, at 1.

[14] Id. at art. X, sec. 1, in Hearings, 108, supra note 1, at 1.

[15] Id. at art. XI, in Hearings, 109-110, supra note 1, at 1.

[16] See Agreement in Implementation of Article III, Panama Canal Treaty, September 7, 1977, Panama - United States, Annex A, in Hearings, 139-144, supra note 1, at 1 (description of these areas).

[17] Panama Canal Treaty, Sepember 7, 1977, Panama - United States, art. XI, sec. 6, in Hearing, 110, supra note 1, at 1.

Title 1 U.S.C. section 109 (1976) states that the repeal of a statute shall *not* "release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still

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[18/] *Id*., sec. 2, in *Hearings*, 110, *supra* note 1, at 1.

[19/] In order to permit the prosecution of criminal offenses which were committed prior to the Treaty and to preserve both private and governmental rights incurred prior to the Treaty, it may be wise, as a precautionary measure, to place a savings clause in the implementing legislation which specifically authorizes continuation of any proper action or prosecution for the enforcement of rights, penalties, forfeitures, or liabilities incurred under statutes the jurisdiction of which was affected by the Panama Canal Treaty of 1977.

remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."[20] However, if this specific rule of interpretation were not present the common law rule would apply:[21]

> [The] repeal of a penal statue operated to expunge the act as though it had never existed. The repeal operates to terminate any prosecution which has not proceeded to a final judgment and granted immunity from indictment or prosecution under the act for offenses committed while the act was in operation. [22]

Under the Treaty, however, the United States has not repealed a statute, it has repealed the jurisdiction under which it prescribed and enforced laws in the Zone, since the laws prescribed under the 1936 Treaty were based upon territorial jurisdiction.[23] "A state does not have jurisdiction to enforce a rule of law prescribed by it unless it had jurisdiction to prescribe the rule."[24] Therefore, after entry into force of the Treaty the United States apparently no longer possesses the power to make or enforce laws except to the extent permitted in the Treaty.

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[20] 1 U.S.C. § 109 (1976).

[21] See C. Sands, Sutherland on Statutes and Statutory Construction §23.06 (4th ed. 1972).

[22] Id. at § 23.36 (footnotes ommited).

[23] C. Z. Code, tit. 1, sec. 2 (1963).

[24] Restatement (Second) on Foreign Relations Laws §7(2) (1965).

II: Classes of Statutes Affected

A statute-by-statute, line-by-line approach was utilized in the attachments this report as the best method by which to analyze the impact of the Panama Canal Treaty on the United States Code. Analysis of the statutes which specifically mentioned the Canal, the Canal Zone, or the Canal Zone Government, resulted in the development of five categories of impact. The first category is composed of statutes based upon territorial jurisdiction which will cease to be applied within the Isthmus at the end of the transition period.

In second category are statutes which could continue to apply after the transition period, for example, exemption of the Panama Canal Company from the federal tort claims procedure. The Company will cease to exist upon entry into force of the treaty, but the Panama Canal Commission is to be its successor agency.[25/] As a United States agency, it would continue to be subject to United States law. Assuming that the legislative schemes upon which these statues were based are not to change, amendatory language would be needed to bring these provisions into conformity with the Treaty. Specific amendments would also be helpful in making it clear that Congress intended their continued applicability.

[25/] Panama Canal Treaty, September 7, 1977, Panama - United States, art. III, sec. 3, in Hearings, 103, supra note 1, at 1.

The third category is a listing of statutes which could continue to be applied, but the legislative scheme has been so disturbed by the Treaty that to suggest amendatory language would be a policy decision. For example, the appointment of cadets to the Naval Academy from residents of the Zone could be changed to permit appointment of cadets from among citizens living in the Canal housing areas, but such a change is not required by the Treaty.

A fourth category was established for statutes which granted authority, rights, or interests, which needed to be preserved, such as the evidentiary rules governing the admissability of government documents from the Zone in United States courts. At the time these documents were were written, the Zone was a United States territory. The Treaty does not affect the status of these documents, and so, the rules for their admissability should be retained.

The final category lists, primarily, statutes which directly conflict with Treaty provisions. Since they have been superceded by the Treaty, deletion would be appropriate and would eliminate confusion.

A word of caution is needed, however. This report has analyzed the Code references to the Canal and the Zone only in light of the Treaty itself. It is intended only to point out the effect of the Treaty on each provision. The issues discussed in the attachments are not merely technical corrections; each change mentioned has an individual effect upon legislative policy. There are limitations upon what the United States may do by law in the Isthmus in light of the Treaty, and this report points out specific examples of these. However, each reference should be examined in light of national policy because every statutory amendment, deletion, or repeal is an expression of that policy by the Congress.

Christine Benagh
Legislative Attorney
American Law Division
January 24, 1979

ATTACHMENT A

SECTIONS OF THE UNITED STATES CODE WHICH WILL BECOME INAPPLICABLE WITH THE TERMINATION OF UNITED STATES TERRITORIAL JURISDICTION AT THE END OF THE TRANSITION PERIOD

Code Citation	Subject of Citation
Agriculture:	
7 U.S.C. § 135	Exclusion of the Canal Zone from insecticide regulations
7 U.S.C. § 610	Authority of the President to determine policy with respect to the volume of sugar imports
7 U.S.C §§ 615, 617	Rebate from taxes on sugar processing and exporting
Atomic Energy:	
42 U.S.C. § 2014(bb)	Application of the atomic energy statutes
42 U.S.C. §2021(n)	Cooperation of the Federal Government with the states with respect to atomic energy
Armed Forces:	
10 U.S.C. § 101(3), (10), (13)	Application of laws regarding the National Guard
10 U.S.C. § 269(g)	Transfer of National Guard personnel to the Ready Reserve
10 U.S.C. § 270(c)	Training requirements for the Army National Guard
10 U.S.C. § 281	Adjutant-type duties in National Guard
10 U.S.C. § 312	Exemptions from militia duty
10 U.S.C. § 594(b)	Exception to limitations on the appointment of National Guard officers

Code Citation	Subject of Citation
10 U.S.C. § 672(b), (d)	Consent of authorities to entry of National Guard to active duty
10 U.S.C. § 771A	Uniform of National Guard upon release from active duty
10 U.S.C. § 802(Art. 2) (11), (12)	Persons subject to the Uniform Code of Military Justice
10 U.S.C. § 1002(c)	Exception to qualifications for reserve officers
10 U.S.C. § 3015	National Guard Bureau for Communication
10 U.S.C. § 3218	Authorized strength of active general reserve officers
10 U.S.C. § 3225	Strength of National Guard units
10 U.S.C. § 3259	Enlisted personnel transfer from National Guard to Army Reserve
10 U.S.C. § 3352	Officer personnel transfer from National Guard to Army Reserve
10 U.S.C. § 3363	Exception of Adjutant Generals to Selection Board procedure
10 U.S.C. § 3364(g), (j)	Declination of promotion by officers and promotion related to transfer
10 U.S.C. § 3370(d)	Declination of promotion to colonel in Army National Guard
10 U.S.C. § 3390(a)	Promotion of Army National Guard officer on active duty
10 U.S.C. § 3392	Appointment of adjutants as Reserve Army officers
10 U.S.C. § 3500	Presidential call-up of Army National Guard
10 U.S.C. § 3501(a), (b)	Time period of Presidential call-up of Army National Guard and authority to apportion from several jurisdictions
10 U.S.C. § 3845	Retirement of National Guard officers

Code Citations	Subject of Citation
10 U.S.C. § 3848	Assignment and retirement of certain officers to Headquarters Detachment
10 U.S.C. § 3851	Assignment and retirement of colonels and brigadier generals with a specified number of years in grade
10 U.S.C. § 3852	Assignment and retirement of reserve major generals
10 U.S.C. § 8218	Strength of Air Force Reserve general officers
10 U.S.C. § 8225	Air National Guard strengths
10 U.S.C. § 8259	Enlisted transfer from Air National Guard to Air Force Reserve
10 U.S.C. § 8352	Officer transfer from Air National Guard to Air Force Reserve
10 U.S.C. § 8360	Exception of adjutants to reserve Air Force officer promotion service
10 U.S.C. § 8363	Exception of adjutants from Selection Board procedure
10 U.S.C. § 8381	Disposition of adjutants after service
10 U.S.C. § 8392	Reserve grade of Air National Guard adjutants
10 U.S.C. § 8500	Presidential call-up of Air National Guard
10 U.S.C. § 8501	Time period of Presidental call-up of Air National Guard and authority to apportion from several jurisdictions
10 U.S.C. § 8845	Retirement of Air National Guard Adjutants
10 U.S.C. § 8851	Retirement of Reserve colonels and brigadier generals from Air National Guard
10 U.S.C. § 8852	Retirement of major generals from Air National Guard

Code Citation	Subject of Citation
10 U.S.C. § 9301	Approval of Governor for call-up of Air National Guard personnel
37 U.S.C. § 101(2)	Definition of "possessions" includes Canal Zone for purposes of pay of the uniformed services
37 U.S.C. § 101(7)	Definition of "Army National Guard" includes Canal Zone for purposes of pay of the uniformed services
37 U.S.C. § 101(9)	Definition of "Air National Guard" includes Canal Zone for purposes of pay of the uniformed services
Aviation:	
49 U.S.C. § 1156	Authority for Secretary of Transportation to provide air navigation, communications, and traffic control facilities in the Canal Zone and transfer of air-related property in the Zone to that Secretary by the Secretary of Defense
Civil Rights:	
29 U.S.C. § 630(i)	Definition of "State" includes the Zone for purposes of age discrimination
Claims:	
22 U.S.C. § 1621(b)	Definition of "United States" includes Canal Zone for purposes of international claims settlement
Communications:	
47 U.S.C. § 152	Exemption of Canal Zone from jurisdiction of the Federal Communications Commission
47 U.S.C. § 153(e)(1)	Exemption of Canal Zone from definition of "interstate commerce"
47 U.S.C. § 153(g)	Exemption of Canal Zone from definition of "United States" for purposes of jurisdiction of Federal Communications Commission
47 U.S.C. § 330(b)(2)	Exemption of the Canal Zone from prohibition against shipment of certain television receivers

Code Citation	Subject of Citation
Consumer Protection:	
15 U.S.C. § 1231(h)	Definition of "United States" includes Canal Zone for automobile disclosure information
15 U.S.C. § 1391(8), (12)	Definition of "United States" includes Canal Zone for motor vehicle safety standards
15 U.S.C. § 1901(16)	Definition of "United States" includes Canal Zone for motor vehicle information
15 U.S.C. § 1901(18)	Definition of "United States district courts" includes Canal Zone court for motor vehicle information
15 U.S.C. § 2052(10)	Definition of "State" for consumer product safety includes Canal Zone
15 U.S.C. § 2203(7)	Definition of "State" includes Canal Zone for fire prevention and control
15 U.S.C. § 2301(15)	Definition of "State" includes Canal Zone for consumer product warranties
21 U.S.C. § 453	Exemption of Canal Zone from poultry inspection laws
21 U.S.C. § 601(g)	Exemption of Canal Zone from meat inspection laws
Employment:	
29 U.S.C. § 1002(10)	Definition of "State" includes Canal Zone for retirement security income
Finance:	
31 U.S.C § 528(c)	Reference to Canal Zone as a territory or possession for purposes of mutilated Federal checks
Hazardous Substances:	
15 U.S.C. § 1261	Definition of "interstate commerce" for purposes of hazardous substances control excludes the Canal Zone.

Code Citation	Subject of Citation
Housing:	
42 U.S.C. § 5402(12)	Definitions of "State" and "United States district courts" includes Canal Zone for mobile home safety standards
Immigration:	
8 U.S.C. § 1440(a)	Naturalization through active-duty service in the armed forces during periods of military hostility if persons was in United States, Canal Zone, etc., at time of enlistment or induction.
Internal Security:	
50 U.S.C. § 82	Definition of "United States" includes Canal Zone for purposes of authority of the President to take special measures to secure materiel during wartime.
50 U.S.C. § 1514	Definition of "United States" includes Canal Zone for purposes of chemical and biological warfare program
Labor:	
29 U.S.C. § 302(a)(9)	Definition of "State" includes Canal Zone for purposes of disclosure of welfare and pension plans
29 U.S.C. § 402(b)	Definition of "State" includes Canal Zone for purposes of labor-management reporting
Law Enforcement:	
18 U.S.C. § 14(a),	Listing of criminal statutes, other than those which apply by their own terms, which are applicable in Canal Zone.
18 U.S.C. § 5003(d)	Attorney General authorized to contract with "state" personnel, including those of the Canal Zone, for handling of convicts..

Code Citation	Subject of Citation
National Guard:	
32 U.S.C. § 101(4), (6)	Definition of "Army and Air National Guard" units includes Canal Zone
32 U.S.C. § 103	Definition of "Army National Guard" includes Canal Zone for purposes of including staff corps within the Guard
32 U.S.C. § 104(a), (c)	Location of National Guard units, designation by President of units and inability to displace local National Guard commander
32 U.S.C. § 107(a)	Apportionment of appropriations for National Guard includes Canal Zone
32 U.S.C. § 107(b)	Appropriation for regular air and army units on duty with Air and Army National Guard not to be from allotment of contributing jurisdictions, including Canal Zone
32 U.S.C. § 107(c)	Expenses of regular enlisted members on duty with Guard not to be taken from allotment
32 U.S.C. § 304	Enlistment oath before officers of National Guard, including those in the Zone
32 U.S.C. § 314(a), (b), (d)	Adjutants general established in jurisdictions, including Canal Zone, and Presidential authority to appoint, and reports made as necessary
32 U.S.C. § 315(a), (b)	Detail of Army officer and enlisted personnel to reserves by Secretary of Army
32 U.S.C. § 324(b)	Termination of appointment of National Guard officers, including those in Canal Zone
32 U.S.C. § 325(a)	Relief of Guard members, yncluding those in Canal Zone, from Guard when transferred to active duty

Code Citation	Subject of Citation
32 U.S.C. § 327(a)	For National Guard not in Federal service, general courts-martial convened by jurisdiction, including Canal Zone.
32 U.S.C. § 331	Approval of dishonorable discharge by Governors, including Canal Zone
32 U.S.C. § 333	Execution of process upon National Guard personnel by Marshalls in jurisdictions, including Canal Zone
32 U.S.C. § 501	Training of National Gurat conducted by jurisdictions, including Canal Zone
32 U.S.C. § 503(b)	Amounts of National Guard field training, including Canal Zone, taken from certain appropriations
32 U.S.C. § 504(b)	Small arms competition may take place outside jurisdictional boundaries, including those of Canal Zone
32 U.S.C. § 505	Presidential and gubernatorial direction for field exercises of National Guard units, including Canal Zone
32 U.S.C. § 702(a)-(d)	Assurance of supplies to National Guard and their purchase by units, including Canal Zone
32 U.S.C. § 703	Credit for supplies issues to National Guard units, including Canal Zone, when units are returned
32 U.S.C. § 704	Relief from accountability for property of National Guard units, including Canal Zone
32 U.S.C. § 708(a), (e)	Designation of National Guard officer, including on in the Zone, to be responsible for fiscal and property matters
32 U.S.C. § 710(c), (d), (e), (f)	Procedures regarding lost or damaged property of the United States issued to the National Guard

Code Citations	Subject of Citations
32 U.S.C. § 711	Disposal of obsolete property by National Guard units
32 U.S.C. § 712	Disposition of proceeds from sale of condemned stores
Transportation:	
45 U.S.C. § 52	Liability for damages to individuals on part of common carriers by railroad, including those in Canal Zone
Securities:	
15 U.S.C. § 77b(6)	Definition of "territory" includes Canal Zone for purposes of regulation of domestic securities under the Securities Act of 1933
15 U.S.C. § 78c(a)(16)	Definition of "United States" includes Canal Zone for purposes of regulation of domestic securities under the Securities Exchange Act of 1934
15 U.S.C. §§ 80a-2(a)(39), 80a-6(a)(1)	Definition of "United States" includes Canal Zone for purposes of regulation of investment companies and advisors under the Investment Company Act of 1940
15 U.S.C. § 80b-2(a)(19)	Definition of "United States" includes Canal Zone for purposes of regulation of investment companies and advisors under the Investment Advisors Act of 1940
22 U.S.C. § 3102	Definition of "United States" includes Canal Zone for purposes of the International Investment Survey
Shipping:	
46 U.S.C. § 224a(6),(7)	Panama Canal Zone exempted from statute regarding ships' officers' competency certificates
46 U.S.C. § 767	Waters of Panama Canal exempted from statutes relating to wrongful death at sea

Code Citations	Subject of Citations
Miscellaneous:	
42 U.S.C. § 5122	Definition of "State" for purposes of disaster relief includes Canal Zone. Disaster relief to the Canal operating areas, installations, and facilities, could be granted under 42 U.S.C. § 5171, since that section authorizes assistance to Federal agencies of which it appears the Commission will be one.

ATTACHMENT B

SECTIONS OF THE *UNITED STATES CODE* WHICH SHOULD BE REVISED TEXTUALLY AFTER ENTRY INTO FORCE OF THE TREATIES IN ORDER TO CLARIFY THE CONTINUED APPLICABILITY OF THE STATUTE IN QUESTION AND TO REFLECT THE NEW TREATY ARRANGEMENT

Code Citation	Subject of Citation and Change
Armed Forces:	
10 U.S.C. § 2573	Transfer of excess military property to Canal Zone Government permitted when Governor certifies that property contributes to operation of the Canal CHANGE: "Canal Zone Government" to "Panama Canal Commission"; "Governor" to "Administrator"; and "Government of the Canal Zone" to "of the Panama Canal." *See also* Panama Canal Treaty, September 7, 1977, Panama-United States, art. XIII, sec. 2(c) [hereinafter referred to as Panama Canal Treaty] in *New Panama Canal Treaty: Hearing on the Agreement in Principle to the Proposed Panama Canal Treaties of 1977 Before the House Committee on Merchant Marine and Fisheries*, 111, 95th Congress, 1st Session (1977) [hereinafter referred to as *Hearings*]; Agreement in Implementation of Article III of the Panama Canal Treaty, Panama Canal Treaty, September 7, 1977, Panama-United States, art. III, sec. 7 [hereinafter referred to as Agreement in Implementation of Article III] in *Hearings*, 124; Agreement in Implementation of Article IV of the Panama Canal Treaty, Panama Canal Treaty, September 7, 1977, Panama- United States, art. IV sec. 3, Annex A [hereinafter referred to as Agreement in Implementation of Article IV] in *Hearings*, 151, 164-166 (property transfer provisions).

Code Citation	Subject of Citation and Change
Communications:	
47 U.S.C. § 352(a)(2)	Panama Canal Company vessels not exempt from radio requirements of U.S. vessels CHANGE: "Panama Canal Company" to "Panama Canal Commission." *See also* Annex: Procedures for the Cessation or Transfer of Activities Carried Out By the Panama Canal Company and the Canal Zone Government, Panama Canal Treaty, September 7, 1977, Panama-United States, sec. 3(m) [hereinafter referred to as Annex] in *Hearings*, 113, *supra* at B-1 (telecommunications).
Federal Employees:	
5 U.S.C. § 5102(a)(1) (vii)	Panama Canal Company excluded from definition of "agency" with respect to statutes on position classification CHANGE: "Panama Canal Company" to "Panama Canal Commission." *See also* Panama Canal Treaty, art. X, in *Hearings*, 108, *supra* at B-1 (employment).
5 U.S.C. § 5102(c)(12) (A), (B)	Employees of United States agencies who are stationed in Canal Zone, and, upon approval of Civil Service Commission, employees of United States agencies in Panama and Canal Zone are exempted from statutes regarding position classification CHANGE: Provision should be re-written to reflect the termination of the distinction between the Canal Zone and the Republic of Panama, and to apply to United States' employees within the Canal operating areas.,
5 U.S.C. § 5316(87)	Governor of the Canal Zone at Level 5 of Executive Schedule for pay purposes CHANGE: "Governor of the Canal Zone" to "Administrator of the Panama Canal

Code Citation	Subject of Citation and Change
5 U.S.C. § 5342(a)(1)(G)	Panama Canal Company excluded from definition of "agency" with respect to pay for prevailing rate employees CHANGE: "Panama Canal Company" to "Panama Canal Commission"
5 U.S.C. § 5343(a)(5)	Canal Zone excluded from areas outside the United States for which the Civil Service Commission fixes schedules and rates for prevailing rate employees CHANGE: "Canal Zone" to "areas and installations of the Panama Canal"
5 U.S.C. § 5348(b)	Panama Canal Company vessel employees may be paid as "prevailing rate in the maritime industry" employees CHANGE: "Panama Canal Company" to "Panama Canal Commission
5 U.S.C. § 5363(1)	Limitation of pay fixed by administrative action does not impair authority, under C. Z. Code, title 2, section 121 (Supp. 1976), of Panama Canal authorities to fix pay by administrative action CHANGE: "Canal Zone Code" to "Panama Canal Code"
5 U.S.C. § 5504(a)(3)(A)	Isthmian employees of the Panama Canal Company or Canal Zone Government exempt from biweekly pay period CHANGE: "Canal Zone Government or the Panama Canal Company" to "Panama Canal Commission"
5 U.S.C. § 5541(2)(xii)	Employees of Panama Canal Company vessels exempt from premium pay statutes CHANGE: "Panama Canal Company" to "Panama Canal Commission"

Code Citation	Subject of Citation and Change
5 U.S.C. § 5583(b)(2)	Accounts of employees of Canal Zone Government paid by that government CHANGE: "Canal Zone Government" to "Panama Canal Commission"
5 U.S.C. § 5595(a)(2)(iii)	Aliens employed outside the United States, District of Columbia, and the Canal Zone, exempt from severance pay statutes CHANGE: "Canal Zone" to " areas and installations of the Panama Canal" to retain employees who are aliens within the definition of "employee" for purposes of severance pay.
5 U.S.C. § 5724a(a)(3), (4)	United States' employees eligible for subsistence pay for relocation when new duty station is Canal Zone CHANGE: "Canal Zone" to "areas and installations of the Panama Canal" in each place it appears.
5 U.S.C. § 5921(6)(B)	Definition of "foreign area" excludes Canal Zone with respect to overseas allowances and differentials CHANGE: "Canal Zone" to "areas and installations of the Panama Canal"
5 U.S.C. § 5924(4)(B)	Educational allowance for travel to assist employees includes allowance for travel of dependents of employees stationed in Canal Zone CHANGE: "Canal Zone" to "areas and installations of the Panama Canal"
5 U.S.C. § 6301(2)(iv)	Excludes Isthmian employees of Panama Canal Company or Canal Zone Government from annual and sick leave statutes

Code Citation	Subject of Citation and Change
	CHANGE: "Canal Zone Government or the Panama Canal Company" to "Panama Canal Commission"
5 U.S.C. § 8146(c)	President may authorize Governor of Canal Zone to waive claim in case of compensation of employee
	CHANGE: "Governor of the Canal Zone" to "Administrator of the Panama Canal Commission" and "Panama Canal Company" to "Panama Canal Commission"
5 U.S.C. § 8146(e)	Appeal rights regarding claims of employees of Panama Canal Company and Canal Zone Government the same as those of Federal employees
	CHANGE: "Canal Zone Government and of the Panama Canal Company" to "Panama Canal Commission"
5 U.S.C. § 8701(a)(B)	Life insurance provisions for Federal employees inapplicable to non-United States citizens or nationals with duty stations outside United States and Canal Zone
	CHANGE: "Panama Canal Zone" to "areas and installations of the Panama Canal"
5 U.S.C. § 8901(i), (ii)	Health insurance provisions for Federal employees inapplicable to non-United States citizens or nationals with duty stations outside United States and Canal Zone
	CHANGE: "Panama Canal Zone" to "areas and installations of the Panama Canal"
Government Property:	
50 U.S.C.App. § 1740	Panama Canal Company exempt from prohibition against continued operation of vessels in commercial service of United States after cessation of hostilities

Code Citation	Subject of Citation and Change
	CHANGE: "Panama Canal Company" to "Panama Canal Commission." *See also* Annex, sec. 4(a)(xvii), *supra* at B-2, in *Hearings*, 114, *supra* at B-1 (commerce by United States)
Internal Security:	
50 U.S.C. § 47f(d)	Definition of "United States" includes Canal Zone for purposes of reward for information regarding violations of export and import restrictions on atomic materials
	PROBLEM: This statute is based upon territorial jurisdiction, but the jurisdiction granted to the United States over security matters might permit operation of this provision. *See* Agreement in Implementation of Article III, art. XIX, *supra* at B-1, in *Hearings*, 137, *supra* at B-1; Agreement in Implementation of Article IV, art. VI, sec. 2, *supra* at B-1, in *Hearings*, 152, *supra* at B-1. The statute would have to be amended to continue its effectiveness.
Judicial:	
18 U.S.C § 41	Canal Zone within the composition of the Fifth Circuit
	CHANGE: Add "areas and installations of the Panama Canal." To delete "Canal Zone" would remove pending cases from the appellate process.
28 U.S.C. § 1860	United States District Court of Canal Zone constituted under C. Z. Code, title 3,

Code Citation	Subject of Citation and Change
	section 1 (1963) a district court for purposes of judicial procedure statutes
	CHANGE: "Canal Zone Code" to "Panama Canal Code" if implementing legislation changes the name of the compilation.
28 U.S.C. § 2680(m)	Panama Canal Company exempt from Federal tort claims procedure
	CHANGE: "Panama Canal Company" to "Panama Canal Commission"
42 U.S.C. § 1701(b)(1)	Payment of disability benefits to family of missing person may occur during missing period if family is resident of United States, including Canal Zone
	CHANGE: "the Canal Zone" to "areas and installations of the Panama Canal"
Law Enforcement:	
18 U.S.C. § 3183	Executive authority of state, etc., including Canal Zone, may demand that United States citizen be turned over from country in which United States exercises territorial jurisdiction. During the transition period many functions performed by the former Governor of the Canal Zone will be performed by the Administrator of the Panama Canal Commission. However, the illustrative list of functions of the Commission makes it clear that the Commission is not intended to possess the authority to make extradition demand. *See* Annex, sec. 3, *supra* at B-2, in *Hearings*, 112-113, *supra* at B-1.
	CHANGE: Amendatory language should specify an appropriate official to carry out this function during the transition period

Code Citation	Subject of Citation and Change
18 U.S.C. § 4217	Authority of Canal Zone Governor to issue warrant for Federal correctional officials to bring criminal offenders back into Canal Zone custody. This does not appear to be a power which the treaty arrangement grants the Panama Canal Administrator. *See* Annex, sec. 3, *supra* at B-2, in *Hearings*, 112-113, *supra*, B-1. CHANGE: Amendatory language should specify an appropriate official to carry out this function during the transition period.
Postal Service:	
39 U.S.C. § 3402(a)	Canal Zone Postal Service considered an armed forces post office in an overseas area CHANGE: "in the Canal Zone Postal Service" to "military post office of the United States Forces in the Republic of Panama." *See also* Annex, sec. 4(a)(xiv), *supra* at B-2, in Hearings, 114, *supra* at B-1; Exchange of Notes Relating to Postal Services, Panama Canal Treaty, September 7, 1977, Panama-United States in *Hearings*, 172.
Transportation:	
14 U.S.C. § 91	Control of vessels to ensure their safety in United States territorial waters extends to control by the Governor of the Canal Zone in those waters; the waters of the Canal Zone are not to be territorial waters of the United States after entry into force of the Treaty. CHANGE: Delete references to the Canal Zone and add to amendatory language to authorize the Administrator of the Panama Canal Commission to control the anchorage and movement of vessels within those areas

Code Citation	Subject of Citation and Change
	and installations of the Panama Canal which the United States may use under the Panama Canal Treaty.
Shipping:	
46 U.S.C. § 1241(b)(1)	Requirement that 50% of United States government cargo be transported on United States flag vessel does not apply to the Panama Canal Company CHANGE: "Panama Canal Company" to "Panama Canal Commission"
Miscellaneous:	
5 U.S.C. § 305(a)(7)	Panama Canal Company exempt from executive review which pertains to the identification of outstanding Federal employees. The Commission, unlike the Company, is to be a wholly owned government corporation to which this section would normally apply. However, this provision was enacted under the Classification Act of 1949 which exempted specified agencies having personnel systems not based upon title 5 of the United States Code. The Commission will continue to have an independent system, and continued exemption would be in conformity with the legislative scheme. CHANGE: "Panama Canal Company" to "Panama Canal Commission"
31 U.S.C. § 82e	Exemption of Canal Zone Government from requirements of disbursing officers relating to disbursement by voucher and liability of the disbursing officers CHANGE: "Canal Zone Government" to "Panama Canal Commission."

Code Citation	Subject of Citation and Change
31 U.S.C. § 846	Definition of "wholly-owned United States government corporation" includes Panama Canal Company for purposes of Congressional control of financial operations CHANGE: "Panama Canal Company" to "Panama Canal Commission"

ATTACHMENT C

SECTIONS OF THE *UNITED STATES CODE* WHICH ARE NOT AFFECTED BY THE TERMINATION OF TERRITORIAL JURISDICTION, BUT THE LEGISLATIVE SCHEMES OF WHICH ARE DISRUPTED BY THE NEW TREATY ARRANGEMENT TO THE EXTENT THAT SUBSTITUTIONAL LANGUAGE IS NOT APPROPRIATE, THUS RAISING QUESTIONS OF THE YNTENT OF CONGRESS

Code Citation	Subject of Citation and Policy Question
Armed Forces:	
10 U.S.C. § 4342(a)(8), 10 U.S.C. § 6954(a)(8), 10 U.S.C. § 9342(a)(8) 46 U.S.C. § 1126	Annual appointment of one cadet to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, and 2 sons of Zone residents to the United States Merchant Marine Academy, respectively, by the Canal Zone Governor. Neither the Commission nor the Administrator seems to be the appropriate official to make such an appointment, yet the Congress may wish to continue the practice of cadet appointment from the operating areas and installations of the Canal. QUESTION: To whom should such appointment power be assigned? Should the reference to "sons" in 46 U.S.C. section 1126 be changed to "children"?
10 U.S.C. § 7308	Authority of Secretary of the Navy to transfer obsolete vessels to Canal Zone. *See also* Agreement in Implementation of Article III of the Panama Canal Treaty, art. III, sec. 7, *supra* at B-1, in Hearings, 124, *supra* at B-1. QUESTION: Should transfer be allowed to the Panama Canal Commission?
50 U.S.C.App. § 541	Includes Canal Zone within those areas [continental United States, Alaska, and the Canal Zone] in which an insured, rather than a beneficiary, under the insurance provisions of the Soldiers

Code Citation	Subject of Citation and Policy Question
	and Sailors Civil Relief Act of 1940, must make written application for protection.
	QUESTION: Should persons in the areas and installations of the Panama Canal continue to be treated any differently from personsin foreign areas or overseas military bases?
Banking:	
12 U.S.C. § 1787(c)(2)	Insurance on deposit of public funds includes those of Canal Zone
	QUESTION: Should coverage be continued or is it unnecessary for the Commission?
Federal Employees:	
5 U.S.C. § 5533(d)(7)(H)	Pay within the purview of C. Z. Code, title 2, section 102 (Supp. 1976) (Canal Zone teachers) exempted from dual pay restrictions
	QUESTION: The deletion ov 5 U.S.C. section 5533 (d)(7)(h) and the addition of 5 U.S.C. section 5533(d)(8), to read as follows: "pay received by a teacher employeed in the areas and installations of the Panama Canal." would preserve the current legislative scheme. However, the Annex to the Panama Canal Treaty prohibits the Panama Canal Commission from conducting educational services not for professional training, including schools and libraries. Annex, sec. 4(a)(xiii), _supra_ at B-2, in _Hearings_, 113, _supra_ at B-1. Those educational services offered in the areas and installations of the Panama Canal will have to operated by a department or agency other than the Sommission if they are to be operated at all. It is a question of policy whether such teachers should be excluded from the dual pay restrictions because they are employed in Panama.

Code Citation	Subject of Citation and Policy Question
5 U.S.C § 6322	Paid leave to serve as jurors or witnesses in courts in Canal Zone QUESTION: Should leave provisions apply to persons serving in courts of Panama as well as in United States District Court of the Canal Zone? In order to continue provision for persons serving in United States district court, no change is needed since the statute applies to court held in the United States, assuming that the court of the Zone will be transferred to continental United States to dispose of pending cases after the transition period.
5 U.S.C. § 8335(c)	Mandatory separation of United States citizen employees of Panama Canal Company and Canal Zone Government at age 62. QUESTION: It appears that there will be a shortage of skilled workers available for the Commission. Should this provision be amended to promote personnel stability? 29 U.S.C. section 633a prohibits age discrimination by executive agencies *inter alia*.
Health:	
24 U.S.C. § 196	Authority of Secretary of Health, Education, and Welfare, to transfer insane persons in Zone to St. Elizabeth's Hospital upon application of Canal Zone Governor. The successor of the Governor, the Commission Administrator, may not possess authority to make such a request for persons in the former Zone area. QUESTION: Should new authority be established to permit the transfer of insane United States citizens in the operating areas of the Canal?

Code Citation	Subject of Citation and Policy Question
Immigration:	
8 U.S.C. § 1101(a)(38)	Definition of "United States" includes Canal Zone for purposes of issuing certificates persons who claim to have derived United States citizenship through a parent or other specified means. QUESTION: Should this provision be continued?
8 U.S.C. § 1403(a), (b)	Persons born of United States citizen parent(s) in Canal Zone or born of United States citizen parents employed by the United States Government or the Panama Railroad Company in the Republic of Panama are United States citizens. QUESTION: Should "Canal Zone" and "Panama Railroad Company" be changed to "areas and installations of the Panama Canal" and "Panama Canal Commission", respectively, in order to extend this policy when the Canal Zone no longer exists as such?
Labor:	
29 U.S.C. § 213(f)	Minimum wage, maximum hours, investigations, and child labor laws apply to foreign territory under United States jurisdiction including the Canal Zone. QUESTION: Should these provisions continue to be applicable to the "areas and installations of the Panama Canal"?
29 U.S.C. § 218(b)	Wages of Federal employees in the Canal Zone in manual crafts set at appropriate minimum wage? QUESTION: Should this provision continue to apply?

Code Citation	Subject of Citation and Policy Question
Shipping:	
33 U.S.C. § 1321(n)	Actions by the United States to recover damage for oil spill removal may be brought in any United States district court, including that of the Canal Zone. On the one hand, the Commission has the authority to protect the environment of the Canal from oil spillage, see Annex, sec. 3(n), supra at B-2, in Hearings, 113, supra at B-1; on the other hand, the Panama Canal Treaty itself does not permit application of United States law in the former Canal Zone after the transition period. See Panama Canal Treaty, art. XI, sec. 7, supra at B-1, in Hearings, 110, supra at B-1. QUESTION: Would it be more appropriate to authorize regulatory authority for the Commission in this and similar areas? Should the Commission, a bi-national organization, be granted authority to seek relief in United States courts in the event of a oil spill damaging United States property?
Taxation:	
26 U.S.C. § 6103(b)(5)	Extends to the Panama Canal Zone the right to obtain income tax returns of United States persons from the Internal Revenue Service, without notifying the taxpayer or obtaining his or her consent. QUESTION: Is this an appropriate power for the Panama Canal Commission to retain?
Veterans:	
38 U.S.C. § 101(20)	Definition of "State" includes Canal Zone for purposes of veterans educational assistance, dependents assistance, and burial plot allowance

Code Citation	Subject of Citation and Policy Question
	QUESTION: The term "State" occurs in the context of payment procedures for these benefits. When the Zone ceases ceases to exist, there will be no similiar political subdivision through which such allocations can be made. Do special procedures need to be created for their payment?
Miscellaneous:	
44 U.S.C. § 906	Governor of Canal Zone to receive five copies of Congressional Record in daily and bound form. The inclusion of the Canal Zone in this provision reflects a statutory scheme under which executive officers of political subdivisions and territories and possessions of the United States receive the Record. The Commission is not to be a political subdivision. Section 906 does not authorize distribution to the heads of Federal agencies or corporations. QUESTION: Should this provision be continued?

ATTACHMENT D

SECTIONS OF THE UNITED STATES CODE WHICH APPEAR TO NEED NO CHANGE IN LIGHT OF THE PANAMA CANAL TREATY

Code Citation	Subject of Citation and Reason for No Change
Armed Forces:	
10 U.S.C. § 9773	Lists the Atlantic southeast and Caribbean areas (for training in long-range operations, especially those incident to reinforcing the defenses of the Panama Canal) among the regions which the Secretary of the Air Force shall consider in determining the sites of new air bases and depots NO CHANGE: United States responsible for defense of the Canal under new treaty arrangement
Banking:	
12 U.S.C. § 101a	Regulates the submission of bonds by national banks, including Panama Canal bonds NO CHANGE: According to Panama Canal Company sources, Panama Canal bonds are all retired, but should some be outstanding the statutes pertaining to them should continue in effect. Their status is not connected to the new treaty arrangement.
Energy and Public Utilities:	
16 U.S.C. § 831n	TVA bonds declared to have same conditions as Panama Canal bonds NO CHANGE: This reference related to the conditions applicable to the bonds of the Tennessee Valley Authority, not to those of the Panama Canal Company.

Code Citation	Subject of Citation and Reason for No Change
Federal Employees:	
2 U.S.C. § 130(b)(2)	United States District Court for Canal Zone considered a court for purposes of statute relating to juror service by Congressional employees NO CHANGE: Although the United States District Court of the Canal Zone will not exist within the "operating areas and installations of the Panama Canal" after the transition period, the cases pending before it may well be transferred elsewhere. The court itself may be transferred to another location to hear these cases. If the court continues for these purposes, the statutes relating to its jurisdiction, venue, service of process, jury service, etc., should continue as well.
5 U.S.C. § 5537(c)	United States District Court for Canal Zone included among those courts for which United States employees receive no fees for jury or witness service NO CHANGE: Although the United States District Court of Canal Zone will not exist within the "operating areas and installations of the Panama Canal" after the transition period, the cases pending before it may well be transferred elsewhere. The court itself may be transferred to another location to hear these cases. If the court continues for these purposes, the statutes relating to its jurisdiction, venue, service of process, jury service, etc., should continue as well.
Finance:	
31 U.S.C. § 743	Panama Canal bonds to have same rights and privileges as certain other bonds NO CHANGE: Established condition of bonds, some of which may be outstanding

Code Citation	Subject of Citation and Reason for No Change
31 U.S.C. § 744	Redemption, payment, and exemption statutes relating to Panama Canal bonds NO CHANGE: Established conditions of bonds, some of which may be outstanding
31 U.S.C § 745	Payment, interest, and exemption from taxes of Panama Canal bonds NO CHANGE: Established conditions of bonds, some of which may be outstanding
Government Property:	
24 U.S.C § 301	Renaming of Ancon Hospital to Gorgas Hospital NO CHANGE: This provision has only historical and informational value.
Immigration:	
8 U.S.C. § 1151(a)	Quota on immigration visas on aliens born in foreign country in the Western Hemisphere, or in the Canal Zone NO CHANGE: Change here is unnecessary since the persons born in the former Canal Zone after treaty effective date will still come under this statute as persons born in a Western Hemisphere country--Panama.
8 U.S.C. § 1406	Declares persons born in the Virgin Islands, residing in various places (including the Canal Zone) in 1932, to be United States citizens. NO CHANGE: Status already vested

Code Citation	Subject of Citation and Reason for No Change
Judicial:	
18 U.S.C. § 3241	Jurisdiction of United States District Court of Canal Zone over offenses committed within its territorial jurisdiction NO CHANGE: This should continue for so long as court does.
18 U.S.C. § 3771, 3772	Authority of United States Supreme Court to prescribe rules of criminal procedure for United States district courts, including United States District Court for Canal Zone NO CHANGE: This should continue so long as the court does.
18 U.S.C. § 4251(d)	Felony includes offense against law of the Canal Zone NO CHANGE: Commission of a felony has many ramifications, e.g., the loss of voting rights or eligibility for certain employment. Change in this statute would relieve persons who violated the laws of the Canal Zone, when the Zone existed, from these penalties.
18 U.S.C.App., Fed. R. Crim. P. 54	Application of Rules of Criminal Procedure to United States District Court for Canal Zone, except as otherwise indicated in the Canal Zone Code (This may become the Panama Canal Code.) NO CHANGE: This should continue for so long as the court does.
28 U.S.C. § 333, 376(q)	Application of annuity benefits to judges of the United States District Court of the Canal Zone NO CHANGE: Transfer or abolition of the court itself should not affect the annuity benefits of its judges and their survivors.

Code Citation	Subject of Citation and Reason for No Change
28 U.S.C. § 460	Regulation of courts, judges, and court records. NO CHANGE: The court may continue, although not located in the Zone, and should continue to be regulated in conformity to those statutes which regulate the other district courts. Should the name of the court be changed, statutes applicable to it should be amended to reflect this.
28 U.S.C. § 526	Authority of Attorney General to investigate United States attorneys and marshals, the clerks of the United States courts (including the United States District Court of the Canal Zone), and others NO CHANGE: This power should continue for so long as the court does.
28 U.S.C. § 610	Definition of "courts" includes the United States District Court of the Canal Zone for purposes of statutes regarding the Administrative Office of the United States Courts NO CHANGE: This should continue for so long as the court does.
28 U.S.C. § 753(a)	United States District Court of the Canal Zone required to appoint court reporters NO CHANGE: This should continue for so long as the court does.
28 U.S.C. § 1246(2)(b)	Exclusive jurisdiction over suits against United States vested in United States district courts, including that of Canal Zone NO CHANGE: This should continue for so long as court does.
28 U.S.C. § 1252	Authority to appeal decisions of the district courts, including Canal Zone

Code Citation	Subject of Citation and Reason for No Change
	NO CHANGE: This should continue to preserve the ability to appeal decisions of that court, even should the court cease to exist.
28 U.S.C. § 1292	Authority of courts of appeals to hear appeals from interlocutory orders of the United States district courts, including that of the Canal Zone NO CHANGE: This should continue for so long as court does.
28 U.S.C. § 1294	Decisions of the United States District Court of the Canal Zone reviewable in the United States Court of Appeals for the Fifth Circuit NO CHANGE: This statute should remain intact to preserve appellate rights.
28 U.S.C. § 1404(d), 1406	Definition of "court" includes United States District Court of the Canal Zone for purposes of venue and transfer of cases NO CHANGE: This should continue for so long as court does.
28 U.S.C. § 1821	Authority for witness fees in district courts includes those of Canal Zone NO CHANGE: This should continue for so long as court does.
28 U.S.C. § 1863	Authority for district courts of Puerto Rico and Canal Zone to create special plans for juror selection NO CHANGE: This should continue for so long as court does, although it may not be needed if the court is transferred to the United States.

Code Citation	Subject of Citation and Reason for No Change
28 U.S.C. § 1871	Grand and petit jurors in United States district courts for Guam and Canal Zone receive same fees as jurors in other district courts NO CHANGE: This should continue for so long as court does.
28 U.S.C. § 2901(e)	Definition of "felony" includes offenses in violation of laws of Canal Zone when the violation was classified as a felony at the time and by the jurisdiction where the offense was committed for purposes of civil commitment and rehabilitation of narcotic addicts NO CHANGE: Application of this statute to those who may be considered for civil commitment and rehabilitation under it should not be affected by the new treaty arrangement. Those who were convicted of felonies in the Canal Zone, when it was under the jurisdiction of the United States, are among the class of persons to who the provisions concerning felonies were intended to apply.
28 U.S.C.App. Fed. R. S.Ct. 22	Filing requirements for petition for writ of certiorari include a final judgment in a district court, including that of Canal Zone NO CHANGE: This should continue for so long as court does.
28 U.S.C.App., Fed. R. App. P. 46	Eligibility to practice before the courts of appeals require admission to practice before a United States district court, including that of the Canal Zone NO CHANGE: This should continue for so long as court does. When this court ceases to exist, attention to this section may be desired if there exist attorneys admitted to practice only before the United States District Court of the Canal Zone.

Code Citation	Subject of Citation and Reason for No Change
28 U.S.C.App. Fed. R. Ct. Cl. 124	Rule for authentication of official domestic records includes court records, including that of Canal Zone. NO CHANGE: Documents of the Canal Zone court may be offered as evidence in United States courts for years to come.
28 U.S.C.App. Fed. R. Civ. P. 44	Rule for authentication of official domestic records applies to court records, including court of Canal Zone NO CHANGE: Documents of the Canal Zone court may be offered as evidence for years to come.
28 U.S.C.App., Fed. R. Evid. 902	Authentication of documents bearing seal of Canal Zone and other jurisdictions NO CHANGE: Authentication by seal should continue since the documents of the Zone were documents of a jurisdiction of the United States when written.
28 U.S.C.App. Fed. Evid. 1101	Applicability of Rules of Evidence to United States District Court of the Canal Zone NO CHANGE: This should continue for so long as court does.
Labor:	
29 U.S.C.§ 216(d)	Work performed in Canal Zone prior to effective date of subsection does not subject an employer to liability under minimum wage law NO CHANGE: Retention of this statute would clarify the continuation of this exemption.
Patriotic Society:	
36 U.S.C. § 821	Location of residence of Jesus Vazques as founder of Military Order of Purple Hearts of America NO CHANGE: This is an historical reference.

Code Citation	Subject of Citation and Reason for No Change
Public Lands:	
43 U.S.C. § 975	Successors of Isthmian Canal Commission may convey property used in Panama Canal construction to Alaskan railroads NO CHANGE: This is now an historical reference.
Transportation:	
49 U.S.C. § 6(11),(12)	Jurisdiction of Interstate Commerce Commission over interstate movement of property, including that transported through the Panama Canal NO CHANGE: Jurisdiction of the ICC over transport through the Canal is unaffected by the new treaty arrangmeent so long as the property is being transported from point to point within the United States, since the ICC has jurisdiction of interstate transport by other routes outside the territorial waters of the United States, 49 U.S.C. section 6(12). The methods of enforcement may change, but jurisdiction would not.
Shipping:	
33 U.S.C. § 5	Exemption of Panama Canal from abolition of tolls on Federal canals NO CHANGE: The statutory policy for this remains, although the Canal would not be construed as a Federal property under the new treaty arrangement.
46 U.S.C. § 843	Definition of "common carrier by water in interstate commerce" for purposes of intercoastal shipping rates includes vessels going from one State to another State via the Panama Canal

Code Citation	Subject of Citation and Reason for No Change
	NO CHANGE: It does not appear that the Treaty was intended to affect the jurisdiction of the interstate commerce laws of the United States. Of course, the United States would cease to possess the police power to enforce them within the areas and installations of the Canal. Annex, sec. 4(b), supra at B-2, in Hearings, 114, supra at B-1.
Voting Rights:	
42 U.S.C. § 1973dd	Definition of "United States" excludes Canal Zone for purposes of the voting rights of overseas citizens. NO CHANGE: Because of this exclusion, American citizens resident in the Zone before the Treaty were entitled to make use of these procedures. There seems to be no reason why implementation of the Treaty would require a change in this section. Its retention appears fully consistent with the policy behind the Act, i.e., establishing a procedure for American citizens overseas to exercise their voting rights.
Miscellaneous:	
5 U.S.C.App., Reorganization Plan No. 3 of 1946, § 801	Canal Zone Biological Area transferred to to Smithsonian Institution NO CHANGE: The custodianship of the Smithsonian Institution over certain research areas is to continue. See Agreement Pursuant to Article VI of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Panama Canal Treaty, September 7, 1977, Panama-United States, in Hearings, 177-178, supra at B-1; Exchange of Notes Relating to Scientific Activities in Panama of the Smithsonian Tropical Research Institute, Panama Canal Treaty, September 7, 1977, Panama-United

Code Citation	Subject of Citation and Reason for No Change
	States, in *Hearings*, 183-184, *supra* at B-2; Exchange of Notes Relating to Custodianship of the Barro Colorado Native Monument by the Smithsonian Tropical Research Institute, Panama Canal Treaty, September 7, 1977, Panama- United States, in *Hearings*, 185-186, *supra* at B-1.
22 U.S.C. § 278	Authorization for land for Gorgas Memorial Laboratory in 1933 NO CHANGE: This is an historical reference. *See* Exchange of Notes Relating to the Gorgas Memorial Institute of Tropical and Preventive Medicine, Incorporated, and to the Gorgas Memorial Laboratory, Panama Canal Treaty, September 7, 1977, Panama- United States, in *Hearings*, 181, *supra* at B-1.
33 U.S.C. § 1222(d)	Panama Canal exempted from statutes regarding ports and waterways safety NO CHANGE: There is no reason to change this exemption. The Treaty permits the United States to establish navigational rules through the Commission. *See* Panama Canal Treaty, art. III, sec. 3(c), *supra* at B-1, in *Hearings*, *supra* at B-1. The Panama Canal Company already has the authority to do so under C. Z. Code, title 2, section 1331 (1963).

ATTACHMENT E

SECTIONS OF THE *UNITED STATES CODE* WHICH BEAR CONSIDERATION FOR DELETION AFTER TERMINATION OF THE TRANSITION PERIOD

Code Citation	Subject of Citation and Problem
Armed Forces:	
18 U.S.C. § 702	Unauthorized wearing of armed forces uniform of public health services uniform in areas of United States jurisdiction or in the Canal Zone PROBLEM: Deletion of "or in the Canal Zone" would make it clear that this provision is not intended to remain in effect in those former Canal Zone areas which do not become military installations or other areas in which such a prohibition might enforceable.
Aviation:	
49 U.S.C. § 1508	Prohibition of navigation of foreign aircraft over the United States, including the Canal Zone PROBLEM: This inclusion of the Zone or the areas and installations of the Canal after the termination of the transition period would be a violation of Panama's sovereignty. *See* Panama Canal Treaty, art. I, sec. 2, *supra* at B-1, in *Hearings*, 102, *supra* at B-1.
Banking:	
12 U.S.C. § 611	Use of depositories by Secretary of Treasury for fiscal agents in Panama or Canal Zone PROBLEM: If the reference to "Panama Canal Zone" were not deleted, the status of banking institutions in the area

Code Citation	Subject of Citation and Problem
	could be confused. A note in the *Code* indicates that the reference to the Phillipines was dropped when those islands were given their independence. Deletion of the reference to the Zone would be consistent with past practice.
12 U.S.C. § 1748(g)	Insurance of mortgages by the armed services PROBLEM: If "Canal Zone" were to be read as "areas and installations" then the procedures regarding armed services housing might be confusing.
12 U.S.C. § 1752(5), (8)	Definitions of "State credit union" and "branch" include those in Canal Zone. PROBLEM: According to Panama Canal Company sources, the Federal credit unions in the Zone have applied for Panamanian charters. Deletion of these references would eliminate confusion.
12 U.S.C. § 1771(a), (b)(1)	Statutes regarding conversion from Federal to State credit unions and from State to Federal credit unions applicable to credit unions in the Zone PROBLEM: *Id.*
12 U.S.C. § 1772	Applicability of Federal law to Federal credit unions, including those in Zone PROBLEM: *Id.*
12 U.S.C. § 1781	Insurance of accounts of Federal credit union members PROBLEM: According to Panama Canal Company sources, the Federal credit unions have applied for Panamanian charters. Deletion of this reference would prevent confusion.

Code Citation	Subject of Citation and Problem
Civil Rights:	
42 U.S.C. § 2000e(i)	Definition of "State" includes the Zone for purposes of employment discrimination PROBLEM: Application of this provision would seem inconsistent with Article X of the Treaty which states a policy of preference for Panamanian applicants for Commission employment. *See* Panama Canal Treaty, art. X, *supra* at B-1, in *Hearings*, 108, *supra* at B-1.
Claims:	
42 U.S.C. § 1651(a)(2), (3)	Provisions of the Longshoremen's and Harbor Workers Compensation Act apply to injury or death of employee at United States bases outside the United States, including Canal Zone bases and public works. PROBLEM: Employees of bases in the areas available for use of the United States would be eligible for such assistance under section 1651(a)(1) "at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government." Deletion of the reference to the Zone would eliminate confusion regarding whether it was intended to remain applicable.
Communications:	
47 U.S.C. § 38	Definition of "United States" includes the Canal Zone for purposes of landing and operating cables PROBLEM: This provision directly conflicts with the restriction of telecommunications by the United States to the operating areas of the Canal and to defense facilities. *See* Agreement in Implementation of Article III, art. X, sec. 1, *supra* at B-1, in *Hearings*,

Code Citation	Subject of Citation and Problem
	130, supra at B-1; Agreement in Implementation of Article IV, art. IX, sec. 1, supra at B-1, in Hearings, 154, supra at B-1. This provision should be deleted in recognition of that sovereignty since a direct conflict exists.
47 U.S.C. § 153(e)(2)	Definition of "interstate communication" includes transmission to or from the Canal Zone to the United States PROBLEM: See id.
47 U.S.C. § 328	Representation of Canal Zone in international radio matters by Secretary of State PROBLEM: See id. Under the new treaty arrangement any communication with the International Telecommunications Union regarding the subject matter of the agreements is to be effected exclusively by Panama. Agreement in Implementation of Article III, art. X, sec. 8, supra at B-1, in Hearings, 131, supra at B-1; Agreement in Implementation of art. IV, art. IX, sec. 8, supra at B-1, in Hearings, 155, supra at B-1.
47 U.S.C. § 606(c)	Presidential authority to suspend radio regulations in areas under United States jurisdiction, including Canal Zone PROBLEM: See explanation of problem, 47 U.S.C. § 38, supra, E-4. Since radio regulations are not by their own authority applicable in the Canal operating areas (such application must be agreed to by Panama, with whom the sovereign power over communications rests), the Presidential authority to change such regulations is of no consequence unless such regulations do apply by mutual agreement, thus, since this provision directly conflicts with Treaty provisions it could be deleted.

Code Citation	Subject of Citation and Problem
	Note that the purpose of the section is to authorize the President to use, control, and/or close radio facilities which might be useful to an enemy for navigational purposes. The President has powers in this area deriving from United States authority over United States employees and from United States authority to defend the Canal, so that Presidential authority to regulate communications continues although based upon the Treaty and related agreements rather than this statute.
Education:	
20 U.S.C. §§ 403(a), 588(A)	Definition of "State" includes Canal Zone for various purposes of the National Defense Education Act, except for purposes of sections 442 and 482 of that Act (state allotments) PROBLEM: It would appear from the Treaty documents that the Panama Canal Commission is not intended to operate schools. The Annex, for example, specifically includes among functions not to be carried out by the Panama Canal Commission "educational services not for professional training, including schools and libraries. . . ." Annex, sec. 4(a)(xiii), supra at B-2, in Hearings, 113, supra at B-1. It appears that United States schools presently operating in the Zone either will become schools subject to Panamanian law or will be transferred to such agencies as the Department of Defense. See Agreement in Implementation of Article IV, art. XI, sec. 1, supra at B-1, in Hearings, 155, supra at B-1. Deletion would insure that there is no questions as to the inapplicability of these programs in the former Zone. To the extent that former United States schools in the Canal area are converted

Code Citation	Subject of Citation and Problem
	to Department of Defense overseas dependent schools, assistance for the purposes of strengthening academic instruction and guidance counseling programs might continue under 20 U.S.C. section 588(B).
Federal Employees:	
5 U.S.C. § 6323(c)(2)(B)	Reserves who are Federal employees to be paid by the government when on active military duty in various United States areas, including Canal Zone PROBLEM: When the Canal Zone ceases to exist, it would be confusing to retain a reference to service there which differentiates it from service in other foreign areas.
Finance:	
31 U.S.C. § 7255(c)(7)	Canal Zone Retirement and Disability Fund one of Government trust funds required to transfer funds every June PROBLEM: According to Panama Canal Company sources, this fund has not been utilized for some time; deletion would seem to be in order.
Foreign Relations:	
19 U.S.C. § 126	Importation statutes applicable to Canal Zone PROBLEM: This directly conflicts with the new treaty arrangement. *See* Agreement in Implementation of Article III, art. XVI, *supra* at B-1, in *Hearings*, 135, *supra* at B-1.
19 U.S.C. § 172	Exclusion of Canal Zone from statutes governing protection of United States producers through International Trade Commission

Code Citation	Subject of Citation and Problem
	PROBLEM: This directly conflicts with the import provisions of the new treaty arrangement. *See* Annex, sec. 4(a)(xv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
19 U.S.C. § 1482(f)	Merchandise invoices from Canal Zone to United States customs area certified by appropriate customs officer PROBLEM: *Id*.
22 U.S.C. § 2778(d)	Arms export control statutes apply to Canal Zone PROBLEM: This authority is not provided the United States under the new treaty, and should be deleted since it conflicts with Article II of the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal. *See* Treaty Concerning Permanent Neutrality and Operation of the Panama Canal, Panama Canal Treaty, September 7, 1977, Panama-United States]hereinafter referred to as Neutrality Treaty], in *Hearings*, 117, *supra* at B-1.
Government Contracts:	
41 U.S.C § 10c	Definitions of United States "public work" and "public building" include those in Zone for purposes of Buy America provisions PROBLEM: This provision would directly conflict with the preferences for Panamanian contractors in the Treaty. *See* Agreement in Implementation of Article III, art. XI, *supra* at B-1, in *Hearings*, 131, *supra* at B-1; Agreement in Implementation of Article IV, art. VIII, supra at B-1, in *Hearings*, 154, *supra* at B-1.
50 U.S.C. § 82(a)	Definition of "United States" includes the Canal Zone for purposes of procurement of vessels during wartime.

Code Citation	Subject of Citation and Problem
	PROBLEM: This provision is based upon territorial jurisdiction. It could violate the preference sections of the treaties. *See id*..
Hazardous Substances:	
15 U.S.C. § 2602(13)	Definition of "State" includes Canal Zone for purposes of Toxic Substances Control Act. PROBLEM: Termination of territorial jurisdiction would not end enforcement the Panama Canal Commission by virtue of this provision against employees of of employment. Under the Treaty, however, environmental protection is intended to be a matter for joint United States-Panamanian cooperation. *See* Panama Canal Treaty, art. VI, *supra* at B-1, in *Hearings*, 105-106, *supra* at B-1.
Health:	
42 U.S.C. § 298b(2)	Definition of "State" includes Canal Zone for purposes of Federal assistance to nurses training. PROBLEM: This provision is in direct conflict with the prohibitions against the Commission carrying out educational functions other than professional training. *See* Annex, sec. 4(a)(xiii), *supra* at B-2, in *Hearings*, 113, *supra* at B-1. The intent of the Treaty appears to limit such assistance to training which will be utilized by the Commission, and section 4(a)(xii) of the Annex prohibits the Commission from participating in health care. *See id*..

Code Citation	Subject of Citation and Problem
Immigration:	
8 U.S.C § 1101(a)(9)	Definition of "consular officer in the Canal Zone" means an officer appointed by the Governor to issue visas PROBLEM: This provision is in direct conflict with the Treaty's prohibitions against immigration regulation by the Commission. *See* Annex, sec. 4(a)(xv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
8 U.S.C. § 1185(d)	Definition of "United States" includes Canal Zone for purposes of travel control during national emergency PROBLEM: *See id*.
Internal Security:	
22 U.S.C. § 619 (iv)	Registration of foreign propagandists applicable in Canal Zone. PROBLEM: United States jurisdiction over security matters is restricted to crimes of treason or sabotage against the United States, espionage or a violation of any law relating to official secrets or secrets involving the defense of the United States. *See* Agreement in Implementation of Article III, art. XIX, sec. 2, *supra* at B-1, in *Hearings*, 137, *supra* at B-1; Agreement in Implementation of Article IV, art. VI, sec. 2, *supra* at B-1, in *Hearings*, 152, *supra* at B-1.
50 U.S.C. § 782(9),(10)	Definitions of "United States" and "commerce" include Canal Zone for purposes of controlling subversive activity. PROBLEM: *See id*..

Code Citation	Subject of Citation and Problem
50 U.S.C. §§ 852, 858	Persons who received espionage training through employment with Canal Zone Government exempted from registration requirements for persons trained in foreign espionage and registration requirements for persons with foreign espionage training PROBLEM: *See* *id*..
50 U.S.C. App. § 18	Application of Trading with the Enemy Act to the Canal Zone PROBLEM: The essence of the Neutrality Treaty is that Canal shall be permanently neutral. Any statute, such as this one, which could interfere with transit based upon the destination of a vessel or its cargo would contravene this principle. *See* Neutrality Treaty, art. I and II, *supra* at E-7, in *Hearings*, 117, *supra* at B-1.
Judicial:	
16 U.S.C. § 951(e)	Definition of United States waters include those of Canal Zone for purposes of International Tuna Convention PROBLEM: Under the new treaty arrangement, the United States has only limited use rights in the waters of the Canal. Negotiations with the International Tuna Convention are not within those limited use rights. Since negotiations with foreign nations are one of the hallmarks of sovereignty, it would seem that deletion of this section would remove a source of future irritation.
28 U.S.C. § 569	Authority of United States marshalls to execute all lawful writs, includes marshalls of Canal Zone PROBLEM: This is direct conflict with the new treaty arrangement which prohibits the maintenance of police by the United States after termination of the transition

Code Citation	Subject of Citation and Problem
	period. *See* Annex, sec. 4(b)(i), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
Labor:	
29 U.S.C. § 217	Authority of United States district courts, including those of the Zone, to restrain violations of the minimum wage laws PROBLEM: Since the United States District Courts for the Canal may continue for sometime, while the jurisdiction under which restraining orders could be issued will terminate with the end of the transition period, deletion would eliminate confusion.
29 U.S.C. § 653(a)	Provisions of the Occupational Health and Safety Act apply to work places in the Canal Zone PROBLEM: After the termination of the transition period, there will be no jurisdiction on which to base enforcement of this provision against a private employer. Since the Commission is to be a Federal agency, it should be exempt from these provisions as are other Federal agencies, 29 U.S.C. § 652 (5).
National Guard:	
32 U.S.C. § 109(a), (b), (c)	No troops, except those authorized by a jurisdiction, including Canal Zone, are allowed in that jurisdiction during peacetime, but nothing prohibits constabulary forces or other forces PROBLEM: The armed forces of the United States may not be present in the former Canal Zone except for the specific purposes of the Panama Canal Treaty and as the two nations agree. *See* Agreement in Implementation of Article IV, art. XIII, sec. 1, *supra* at B-1, in *Hearings*, 157, *supra* at B-1.

Code Citation	Subject of Citation and Problem
Parks and Wildlife Protection:	
16 U.S.C. § 1362(3), (14)	Definitions of "district courts" and "United States" includes Canal Zone for purposes of marine mammal protection. PROBLEM: This directly conflicts with treaty provisions making environmental protection a subject of United States-Panamanian cooperation. *See* Panama Canal Treaty, art. VI, *supra* at B-1, in *Hearings*, 105-106, *supra* at B-1.
Postal Service:	
39 U.S.C. § 403(a)	United States Postal Service is authorized to operate "except as provided in the Canal Zone Code" PROBLEM: Operation of postal services by the Commission is specifically prohibited under the new treaty arrangement. *See* Annex, sec. 4(a)(xiv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
39 U.S.C. § 3401(b)	Canal Zone included among those areas which may be a point of embarkation or debarkation for mail to United States forces overseas PROBLEM: *See id.*.
39 U.S.C. § 3402(a), (b)	Department of Defense reimburses Canal Zone Postal Service for handling armed forces mail PROBLEM: *See id.*.
39 U.S.C. § 3682	Canal Zone listed as possession of the United States for purposes of size and weight limitation on postal packages PROBLEM: *See id.*.

Code Citation	Subject of Citation and Problem
Shipping:	
15 U.S.C. § 31	Vessels engaged in United States trade prohibited from Panama Canal transit if owners in violation of antitrust laws PROBLEM: This statute grants specific authority to interfere with Canal transit to enforce laws of the United States. The termination of territorial jurisdiction will prevent the enforcement of this statute in the former Zone and in the Canal operating areas, however, it may be appropriate to delete statutory reference which seem to impinge upon Panamanian sovereignty.
46 U.S.C. § 170	Definition of "vessel" does *not* include those of Panama Canal Zone for purposes of carriage of dangerous and explosive substances PROBLEM: Since the authority of the United States to regulate navigation in the Canal is specifically addressed in the treaty documents, it may be appropriate to delete statutory references to the Canal to avoid conflicting United States law and regulation which might not conform to the treaties.
50 U.S.C. § 191	Authority of Governor of Canal Zone, with approval of President, to regulate vessels in territorial waters of United States during national emergency PROBLEM: The Panama Canal Treaty recognizes Panama's territorial sovereignty over the Canal waters. It may be appropriate to delete statutory references which seem to impinge upon that sovereignty. *See* art. I, sec. 2, *supra* at B-1, in *Hearings*, 102, *supra* at B-1. Although the United States has certain defense obligations under the

Code Citation	Subject of Citation and Problem
	Treaty for the Permanent Neutrality and Operation of the Panama Canal which could permit regulation of the movement of vessels in the Canal, the authority for these is based upon the treaty itself not statute or territorial claims.
50 U.S.C. § 195	Definition of "United States" includes Canal Zone for purposes of seizure of vessels in United States waters during times of national emergency PROBLEM: The Panama Canal Treaty recognizes Panama's territorial sovereignty over the Canal waters. It may be appropriate to delete statutory references which seem to impinge upon that sovereignty. *See* art. I, sec. 2, *supra* at B-1, in *Hearings* 102, *supra* at B-1.
50 U.S.C. § 196	Authority of Secretary of Commerce to procure vessels lying idle in waters in United States jurisdiction, including Canal Zone. PROBLEM: The Panama Canal Treaty recognizes Panama's territorial sovereignty over the Canal waters. It may be appropriate to delete statutory references which seem to impinge upon that sovereignty. *See* art. I, sec. 2, *supra* at B-1, in *Hearings*, 102, *supra* at B-1.
Taxation:	
26 U.S.C § 7651(4)	Describes the Canal Zone as a possessions of the United States for purposes of tax liability and collection PROBLEM: Although thise provision would become inapplicable with the termination of territorial jurisdiction, deletion would clarify the rights and liabilities of persons in the former Zone and areas and installations of the Canal for tax purposes.

Code Citation	Subject of Citation and Problem
Transportation:	
49 U.S.C. § 781	Unlawful use of vessels to carry contraband includes prohibition of carriage through, to, or from the Canal Zone PROBLEM: *See* explanation of problem, 15 U.S.C. §31, *supra* at E-13.
Miscellaneous:	
11 U.S.C. § 456	Definition of "United States" includes Canal Zone for purposes of restrictions on port embarkation and debarkation during period of declared neutrality PROBLEM: This provision is in direct conflict with the Annex. *See* Sec. 4(a)(xv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
18 U.S.C. § 1821	Penalty for transportation in interstate mails, including to and from Canal Zone, of dentures manufactured by unlicensed organizations PROBLEM: This provision is in direct conflict with the Annex. *See* Sec. 4(a)(xiv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
20 U.S.C. § 79	President is authorized to set aside within Canal Zone the Barro Colorado Island which shall be left in its natural state except in time of national emergency PROBLEM: This provision is in direct conflict with the new treaty arrangement. *See* Agreement Pursuant to Article VI of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, *supra*, at D-10, in *Hearings*, 177-178, *supra* at B-1; Exchange of Notes Relating to Custodianship of the Barro Colorado Native Monument by the Smithsonian Tropical Research Institute, *supra* at D-11, in *Hearings*, 185-186, *supra* at B-1.

Code Citation	Subject of Citation and Problem
22 U.S.C. § 408a	Definition of "United States" includes Canal Zone for purposes of passports, illegal exportation of war materials, detention and expulsion of vessels PROBLEM: This provision is in direct conflict with the new treaty arrangement. *See* Neutrality Treaty, art. I and II, *supra* at E-8, in *Hearings*, 117, *supra* at B-1; Annex, sec. 4(a) (xv), *supra* at B-2, in *Hearings*, 114, *supra* at B-1.
22 U.S.C. § 701(c)	Definition of "United States" includes Canal Zone for purposes of relations with courts of the armed forces of friendly foreign countries PROBLEM: Relations of this type will be superceded by a status of forces agreement with Panama. Since relations with foreign countries are an important incident to sovereignty, recognition of that sovereignty would make deletion appropriate.
22 U.S.C. § 2621	Officials in Canal Zone Government are subject to provisions of law regulating acceptance of foreign decorations PROBLEM: This application does not appear appropriate for the members of a bi-national commission, which would be the case if substitutional language were used.

Mr. HUBBARD. I also wish to ask unanimous consent that another study prepared for the subcommittee be placed in the record. This is a study of those provisions of Panamanian law which will relate to the canal operating area and canal employees and therefore affect the canal in that way. The are important to the execution of the Panama Canal Treaty and could interrelate with various provisions of the laws adopted by the United States.

For example, we have asked for an outline of the provisions of Panamanian law on licensing, because Panama will be licensing the U.S. nonprofit organizations that now operate in the Canal Zone. We have asked that an outline of court procedures in Panama be presented, because one annex of one of the implementing agreements guarantees certain rights to U.S. employee's independence in criminal cases in the Panamanian court.

Is there any objection to this being entered into the record? Hearing none, that study is placed in the record at this point.

[Study submitted for the record follows:]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C., December 7, 1978.

Mr. RUBENS MEDINA,
Chief, Hispanic Law Division,
Library of Congress, Washington, D.C.

DEAR MR. MEDINA: The 1977 Panama Canal Treaty requires both generally and in many specific areas that there be very close cooperation between the United States and Panama in connection with the operation and defense of the Panama Canal. In order to write in the 96th Congress the best possible legislation to implement the Panama Canal treaties, the Committee on Merchant Marine and Fisheries should be knowledgeable of the Panamanian law, regulations, etc. that apply in those areas in which cooperation and coordination of the two countries is required.

Accordingly, the Committee requests that the Hispanic Law Division provide a summary of various substantive provisions of Panamanian law in those areas integral to the new treaty relationship. Additionally, the Committee requests that responses be provided to specific questions listed under the general areas for which summaries are requested.

The subjects in which the Committee has interest, and specific questions related thereto, are listed in order of priority.

1. General summary of the Panamanian law-making process

2. Panama Canal Authority

a. What institutions of the Government of Panama would be responsible for the nomination and/or confirmation of members of the Panama Canal Commission? (Paragraph 3, Article III, Panama Canal Treaty).

Is there any indication of whether there will be any such process for Commission members in the Government of Panama?

b. What is or will be the relationship of various Panamanian Government institutions to the Panama Canal Consultative Committee? The Joint Commission on the Environment?

3. Environmental and Wildlife Protection

Enclosed is a list of environmental laws and regulations now in force in the Canal Zone. What Panamanian laws parallel those laws now in effect in the Zone? What is the substance of this law?

4. Criminal Law

a. How do the rights guaranteed by the Constitution and laws of Panama compare with the personal and civil rights contained in Chapter 3, title 1, Canal Zone Code?

b. What provisions of Panamanian law will allow the Government of Panama to lend cooperation for enforcement of regulations of the Commission and rules of the Panama Canal Commission for "passage of vessels through the canal and other rules with respect to navigation and maritime matters?" Through what channels or by what mechanism would coordination be effected? (Paragraph 2, Article III, Panama Canal Treaty)

c. In the Panamanian court system, how does the standing of the accused in law differ from such standing in the U.S. court system?

d. What law now exists in Panama to effectuate the coordination that will be necessary in the area of criminal jurisdiction during the 30-month transition period?

e. Special treatment exists in the treaty's Article III implementing agreement for the commission of crimes in Panama by U.S. citizen employees and dependents. Five crimes are set out in Article XIX of this implementing agreement as crimes with respect to which Panama need not hand accused citizens over to the U.S.

One of these five crimes listed is "crimes against the security of the Panamanian state." In Panama, what are considered crimes against the security of the state? What are the penalties for these offenses? Do the definitions of crimes make any delineation between Panamanian and non-Panamanian citizens?

f. Has any mechanism been established in Panamanian law for implementing the double jeopardy provision of paragraph 8 of Article XIX of the Agreement in Implementation of Article III of the Panama Canal Treaty?

5. Provision of Public Services

a. What is the process for the appropriation and expenditure of those funds dedicated to the public services that are provided by the Government of Panama? (Article III, paragraph 5, Panama Canal Treaty)

Is the process one which is sufficiently in the public domain to allow public examination of the sums expended?

b. Various provisions in the Panama Canal Treaty and related agreements will cause the Panama Canal Commission to utilize utilities and services available in Panama. For utilities, what are the basic rate-setting procedures and structure in Panama, and what kinds of costs are recovered through rates? (e.g., paragraph 4, Article X of agreement implementing Article III)

6. Land Use and Zoning

Licensing of land within the canal area is discussed in Article IV of the Agreement Implementing the treaty's Article III. What are the qualifications, restrictions and conditions which apply to land licensing by Panama?

7. Defense

Which institution exercises legal authority over the National Guard of Panama? What is the nature of the authority? What powers are exercised by the Commander of the National Guard forces as compared to the President?

Are any special powers designated for the commander of the canal's Panamanian defense force?

b. Paragraph 10, Article IX of the Panama Canal Treaty states that Panama and the U.S. will cooperate to guarantee the security of the Panama Canal Commission. What laws has Panama enacted in this respect?

8. Labor Law

a. Several provisions of the treaty (including paragraphs 3(d) and 4, Article X) concern transmission of information on licensing of professional personnel in Panama. What is the procedure for obtaining a license for a professional or craft skill in Panama?

b. What are the basic requirements for Panamanian licenses, permits or classifications for driving, vessel operation, air piloting, amateur radio operation, etc.? Article XIV of the agreement implementing Article III of the treaty makes renewal of such licenses subject to Panamanian law and regulations.

c. What are the major rights and benefits enjoyed and the major "contractual" obligations of employees of the Panamanian Government?

d. Contractors working for the Panama Canal Commission are subject to the laws and regulations of Panama except as otherwise indicated in the treaty arrangement (Article XI of agreement implementing Article III of the treaty)

What specific laws and regulations of Panama apply to contractors?

What is the nature of the insurance cited in paragraph 7 of Article XVIII of the agreement implementing Article III of the treaty?

10. Social Security System

What does the present Panamanian law provide as to unemployment compensation and benefits for those who are severed or retired from government employment?

What indication is there that such law will apply to former employees of the Panama Canal Commission?

11. Rights of Ownership

Under the new treaty arrangement, Panama will obtain title to housing now owned by the Panama Canal Company. Some U.S. citizen canal employees have expressed a desire to purchase the housing in which they now live. Are there currently provisions of Panamanian law providing for the sale of government-owned housing to private citizens? If any such programs exist, what are the qualifications for eligibility? What nationality restrictions exist?

12. Admiralty

Panama will assume some jurisdiction over legal cases involving admiralty questions under the new treaty arrangement. What are the bases and what are the principles or any more specific provisions of admiralty law which may exist?

13. Nonprofit Institutions

a. What are the major provisions of law that apply to nonprofit institutions in Panama? Is the nonprofit concept similar or identical to that applied in the U.S.?

b. According to the terms of the treaty (paragraph 5 of Article III), the cost of purchase of land for nonprofit institutions "will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama." What are the rules that currently apply in Panama?

The Committee is dispatching with this letter a batch of documents which may be useful in writing the summaries and responses requested. Additionally, we have asked the State Department to provide the Committee and the Hispanic Law Division with any information the U.S. Embassy in Panama may have with respect to Panamanian legislation to implement the treaties.

It is clear that some of the specific items requested will not be available until Panama enacts legislation on particular subjects. For whatever material is not now available, we request that the Hispanic Law Division summarize the new applicable Panamanian law as soon as it becomes available.

Since hearings on implementation of the new canal treaties will probably commence in early February, we request that all or as many as possible of the responses be provided to the Committee not later than January 15.

Please consider the order in which the issues are set out as a priority of listing of the issues. The Committee has no objection to specialized response to its questions, so that each individual issue, as soon as it has been prepared by the Hispanic Law Division, may become immediately available.

Please coordinate as necessary with Mr. Terry Modglin or Miss Molly Dominick of the Panama Canal Subcommittee staff (telephone: 225-8186).

Thank you for your cooperation.

Sincerely,

JOHN M. MURPHY,
Chairman.

LIBRARY OF CONGRESS RESPONSE TO QUESTIONS POSED BY MR. MURPHY IN LETTER OF DECEMBER 7, 1978

PANAMA CANAL TREATY—PANAMANIAN RELATED AND IMPLEMENTING LEGISLATION*

I. GENERAL SUMMARY OF THE PANAMANIAN LAW-MAKING PROCESS

A. The legislative body

Under the Constitution of Panama[1] the legislative power is exercised through the National Assembly of Representatives of Corregimientos (National Assembly) and the National Legislative Council (art. 129).

1. *The National Assembly.*—The National Assembly meets annually in its own right, without previous convocation, in the capital of the Republic, from October 11 until November 11 in each of the 6 years of the term for which its members are elected (art. 131). It may hold regular and special sessions. Regular sessions are held during the period specified above; special sessions are held in compliance with the provisions of article 142 of the Constitution and those called by the Executive to deal with specific matters for a specific period (art. 132).

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* Prepared by Armando E. González, Assistant to the Chief, and Rubens Medina, Chief, Hispanic Law Division, Library of Congress.

[1] Constitución Política de Panamá of October 11, 1972 (Gaceta Oficial [G.O.], Oct. 24, 1972), as amended by Acts 1 and 2 of the National Assembly of Oct. 5 and 25, 1978, respectively (G.O., Nov. 16, 1978).

The National Assembly must approve, with or without modifications, or disapprove the amendments to the Constitution submitted to it by the National Legislative Council. Amendments must be ratified subsequently by the National Assembly that takes office in the following term (art. 140).

The legislative functions of the National Assembly consist of enacting laws for the following purposes—

To approve or reject international treaties signed by the Executive;

To declare war and empower the Executive to negotiate peace;

To approve or reject amendments to the political division of the national territory proposed by the Cabinet Council;

To grant amnesty for the commission of political crimes; and

To issue its internal regulations (art. 141).

Accusations or charges against the president and vice president of the Republic, magistrates of the Supreme Court, the attorney general, the commander in chief of the National Guard, and the solicitor general are within the competence of a judicial commission composed of the officers of the National Assembly and three representatives from each province and one from the district of San Blas, elected by the full assembly. If there are grounds therefor, the judicial commission shall try them for acts in violation of the Constitution and laws committed in the performance of their duties. The law shall establish the procedures to be followed and the penalties to be imposed (art. 142).

The laws to be enacted by the National Assembly shall be proposed by the Special Committee of the Assembly or by the Cabinet Council. Enactment requires approval in a single debate and vote by absolute majority of the members of the Assembly. Laws must be promulgated within 6 working days following their enactment and take effect from the time of their promulgation, unless the law itself provides that it shall become effective on some other date (art. 145). It should be noted that the provisions of article 144, section 4 of the Constitution prohibit the National Assembly from delegating any of its functions.

2. *The National Legislative Council.*—This council is composed of the following: (a) the president of the National Assembly, who presides, or in his absence the vice president of that body; (b) four municipal representatives from each province and one each from the districts of San Blas and Puerto Obaldía, for a period of 2 years; (c) two provincial representatives and one for each locality or political division created by law in the Indian zones (art. 146). The president and vice president of the Republic, the Supreme Court, the attorney general, the solicitor general, the Election Court (in election matters and by authorization of the Cabinet Council), and the ministers of State have legislative initiative before the National Assembly. They all have the right to a voice in the National Legislative Council. The Council shall appoint a counseling commission, composed of as many members as it deems necessary, which is entitled to a voice in the Council's debates. Its functions and grounds for dismissal shall be determined by its internal regulations, and their salaries shall appear in the budget (art. 147).

Except for those laws that must be enacted by the National Assembly, the National Legislative Council enacts the laws that are necessary for the purposes of the State and in the exercise of the Government's functions as stated in the Constitution, especially the following—

To enact, put into effect, amend or repeal the national codes;

To determine the number and titles of the ministries of State and assign their functions;

To limit and regulate the awarding of vacant lands;

To decide upon the use of national property for public purposes;

To decide upon the transfer of movable and immovable national property;

To determine the number and titles of state corporations requiring an autonomous or semiautonomous status and to assign their functions;

To establish taxes, assessments, revenues and official monopolies;

To create administrative departments with internal autonomy, interministerial agencies and technical councils;

To establish and organize public services;

To determine the standard, weight, value, form, type and denomination of the national currency; and

To issue its internal regulations (art. 148).

The National Legislative Council may not—

Enact laws in violation of the text and spirit of the Constitution;

Charge to the public treasury indemnifications that have not been previously declared by the courts, or issue scholarships, pensions or bonuses that have not been accorded pursuant to the existing general laws; or

Decree the banishment or persecution of natural or juristic persons (art. 149).

In addition to the persons mentioned in article 147 of the Constitution, the members of the National Legistative Council may propose legislation. The provincial coordinating councils may also do so through their respective vice presidents or through the president of the National Assembly (art. 150).

Proposed laws are approved in two debates in public sessions held on different days, by absolute majority of the members of the National Legislative Council, after the required consulation with the provincial coordinating councils and the national sectors that may be affected by the proposed law (art. 151). In order to better fulfill its functions, the National Legislative Council may request oral or written reports from the public servants directly connected with the object of the proposed law, as well as their attendance at the sessions, when it is deemed necessary to illustrate the debates (art. 152).

After the proposed law is approved, it is sent to the Executive. If the latter sanctions it, he then orders its promulgation as law; if he does not, he returns it will his objections to the National Legislative Council. The Executive has 30 working days to return any approved proposed law with his objections. If he does not return it after this term, he cannot leave it without his sanction and promulgation. If the Executive does not fulfill his obligations of sanctioning and promulgating the laws as provided above, they shall be sanctioned and promulgated by the president of the National Assembly.

The objections by the Executive to the proposed laws shall be governed by the following rules:

(a) A proposed law vetoed in its entirety by the Executive shall return to the National Legislative Council for a second debate. If it was vetoed only in part, it shall return to the Council for a first debate to consider the objections raised.

(b) To overrule the Executive, a vote of no less than two-thirds of the members of the National Legislative Council is required, otherwise the proposed law shall be rejected.

If the Executive's objections are rejected, he may:

(a) Sanction and other the promulgation of the approved law as approved by the National Legislative Council; and

(b) Submit the proposed law approved by the National Legislative Council to the National Assembly for discussion, approval or rejection. Approval by the National Assembly requires a favorable vote by the absolute majority, in which case the Executive shall proceed immediately to have it sanctioned and promulgated.

If the Executive vetoes a projected law because he considers it impossible to enforce and the National Legislative Council, by a two-thirds majority, insists on its adoption as a law, the Executive shall forward it to the Supreme Court for its decision concerning the law's enforceablity. The Court's decision declaring the law enforceable binds the Executive to have it sanctioned and promulgated (art. 153).

Laws are enforceable as of the date of their promulgation, except when provided to the contrary therein (art. 153B).

B. The Executive

Under the Consitution of Panama, the Executive is constituted by two citizens, the president of the Republic and the vice president of the Republic, requiring the support of the ministers of the Cabinet (art. 155). In each particular case, the president or vice president exercises his functions as representative of the Executive (art. 156). The president shall be elected by direct popular suffrage for a term of 6 years. The vice president shall be elected together with the president, in the same manner and for the same term. He replaces the president during his absence, pursuant to provisions of the Constitution (art. 157).

Following are some of the powers exercised by the president of the Republic alone:

> To take measures for the National Assembly to meet on the day prescribed in the Constitution or in the decree calling a special session;
>
> To conduct foreign relations and enter into international treaties and agreements, which shall be submitted to the National Assembly for consideration;
>
> To freely appoint and dismiss the cabinet ministers; and
>
> To obey and enforce compliance with the laws and promulgate those enacted by the National Legislative Council (art. 163).

The president of the Republic, together with the cooperation of the respective minister, the Cabinet Council or the National Assembly, has the power to enact regulations for laws that require them for better enforcement, without deviating from the letter or spirit thereof (art. 164).

The vice president of the Republic has, among others, the power to attend the sessions of the Cabinet Council, with voice and vote (art. 165).

The president and vice president of the Republic may delegate their powers to other public officials or entities, as prescribed by law (art. 166). Except for those acts that may be exercised by them alone, the acts of the president and vice president do not have validity unless countersigned by the respective minister of State, who assumes responsibility for the act. Orders and resolutions issued by a minister on the instructions of the president or vice president are obligatory and may be invalidated only by the president or vice president, provided they are not contrary to the Constitution or the law (art. 167).

C. The Cabinet Council

The Cabinet Council consists of the meeting of the ministers of State and the vice president of the Republic under the direction of the president or acting president of the Republic (art. 179). Its functions include the following:

> To approve decrees issued by the president concerning the suspension and restoration of guarantees, with the Council members and the commander in chief of the National Guard being responsible;
>
> To request written or oral reports from public officials and entities as necessary in relation to the matters it must consider (art. 180);
>
> To dictate the economic policy, and in particular to approve the budgets of revenues and expenditures and of public investment by the central government, the autonomous and semiautonomous entities and the state corporations;
>
> To approve supplementary or extraordinary credits related to these budgets; and
>
> To approve and amend customs duties (art. 181).

D. The General Council of State

The General Council of State is formed by the president of the Republic, who presides, meeting with the vice president of the Republic, the ministers of State, the general directors of autonomous and semiautonomous entities, the commander in chief of the National Guard, the comptroller general, the attorney general, the solicitor general, the president and board of directors of the National Assembly, and the presidents of the Supreme Court and the Election Tribunal (art. 181). Its basic function is to act as an advisory and coordinating body on matters submitted to it by the president of the Republic.

E. Different Kinds of Laws; Their Hierarchical Status [2]

Constitución (Constitution).—Constitutional prevalence over all othe legislative instruments is derived from the constitutional provision establishing that the Supreme Court shall decide all cases concerning the constitutionality of laws, decrees, accords, resolutions, and other acts. The court's decisions are final and published in the office gazette.

Tratado Internacional (International Treaty).—The president of the Republic is entrusted with the power to negotiate treaties and agreements with foreign powers. However, these instruments also require submission to and approval by the representatives' Assembly for enactment and enforcement. The Assembly may not introduce amendments to treaties; it functions are confined to their approval or disapproval. Approval is accomplished by means of a law enacted by the Assembly.

There are special treaty provisions for the Panama Canal, its adjacent zones, their protection, and the construction of a third set of locks. Treaties and agreements on these matters require submission to and acceptance by a national plebiscite.[3]

There are not specific provisions in the charter regarding the hierarchy of international instruments. Nevertheless, a Panamanian scholar stated that although treaties and agreements are laws in the formal sense, in fact they have a special status. They may not be repealed in Panama by subsequent ordinary statutes or by new constitutions, even if the charter or the laws contain provisions contradicting the text of the treaty.[4]

Ley (Law).—The exercise of legislative power is entrusted to the National Assembly or to the National [Legislative] Council. The former has very restricted legislative powers, while the latter has broader responsibilities, including the enactment of all laws necessary for the fulfillment of the objectives of the state.

Decreto (Decree).—The functions assigned to the Panamanian executive power are entrusted to a president and a vice-president of the republic. They are supported by the cabinet ministers who must countersign all the executive issuances for legal validity. Under certain circumstances, the support of the National Legislative Council is prescribed for executive legislative issuances. The cabinet ministers provide the required support individually or as a body called the Cabinet Council.

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[2] This section, except for the final paragraph, is excerpted from the following work not yet published: R. Medina and C. Medina-Quiroga, Nomenclature and Hierarchy: Basic Latin American Legal Sources (Washington, D.C., Library of Congress [1979]).

[3] Constitución, art. 274.

[4] C.A. Quinteros, Derecho Constitucional 529 (vol. 1) (San José, Costa Rica, Librería Litografía e Imprenta Antonio Lehmann, 1967).

The most important legislative function of the president is to issue regulations for the implementation of certain laws. These regulations must strictly conform to their legislative source. The official gazettes indicate that regulations are passed by means of a decree. They are ordinarily signed by the president of the republic and the corresponding minister of the cabinet.

Occasionally, executive issuances are entitled executive decrees. Nevertheless, no appreciable differences were found between a decree and an executive decree. This may suggest that both are being used interchangeably.

Concerning their rank, decrees are subordinate to laws and must therefore conform to them; compliance is entrusted to the Supreme Court which may annul decrees issued in violation of the constitution and the laws. The comptroller general is responsible for compliance when decrees concern public funds or property.

Publication of these instruments is required in the official gazette.

Resolución (Resolution).—This instrument is also an executive issuance which may bear such headings as resolución de gabinete (cabinet resolution), resolución ejecutiva (executive resolution), and resolución ministerial (ministerial resolution). They are all subordinate to the laws and the constitution.

Cabinet resolutions originate within the Cabinet Council, an executive body consisting of the cabinet ministers and the vice president, which is headed by the president of the republic. Some of the functions entrusted to the Cabinet Council are performed by means of these issuances. In this regard, some of the Council's responsibilities are to approve the appointment of the justices of the Supreme Court by the president of the republic, to approve or reject government loans and the transfer of state property, and to support or oppose presidential decisions concerning suspension of constitutional guarantees.

Executive resolutions are issued by the president of the republic with the support of one or more of the corresponding individual ministers of the cabinet. The content of executive resolutions found in several issues of the official gazette revealed that these instruments are used to control administrative matters.

Ministerial resolutions are issued by individual ministers of the cabinet upon instructions from either the president or the vice president of the republic.

Instruments bearing the simple heading Resolution have also been published in the official gazette. These instruments appear to be no different from executive resolutions in both content and format.

No reference was found in the Panamanian legal literature available concerning the authority relationship between these resolutions and the decrees described in the preceding section. The pertinent constitutional passage suggests, however, that the president may invalidate a resolution at his own discretion when it violates either a law or the constitution.

The publication requirement is complied with by its insertion in the official gazette.

Case Law.—The principle of stare decisis as it is known in common law countries has a different meaning under the laws of Panama. Thus, under the provisions of article 3 of Law 86 of July 1, 1941:[5]

The purpose of the recourse of cassation is to uniform the national jurisprudence; therefore, three uniform decisions by the Supreme Court constituted as court of cassation on the same legal issue constitute probable doctrine that may be applicable by other judges in similar cases. This does not affect the right of the Supreme Court to change its doctrine in that same issue should it believe the previous decisions have been erroneous.

II. PANAMA CANAL AUTHORITY

A. *What institutions of the Government of Panama would be responsible for the nomination and/or confirmation of members of the Panama Canal Commission? Is there any indication of whether there will be any such process for Commission members in the Government of Panama?*

Concerning this question, the recently approved Panama Canal Treaty provides as follows:

Article III. * * * 3) Pursuant to the foregoing concession of rights, the United States of America shall, in accordance with the terms of this treaty and the provisions of the laws of the United States of America, carry out its responsibilities by means of a United States government agency to be designated the Panama Canal

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[5] In J. Fábregas P. and R. E. Fábregas F., Código Judicial 546 (Panama City, 1961).

Commission which shall be constituted in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be directed by a Board of Directors composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

In accordance with this provision, it should be noted that the Panama Canal Commission is a United States government agency constituted in conformity with the laws of this country. Four of its directors shall be "Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of Amercia in a timely manner." Consequently, the rights of Panama are limited to the proposal of four Panamanian nationals to the United States of America. The language of this provision seems to indicate that confirmation of the appointed officials will be made pursuant to what may be provided under the laws of the United States.

Concerning the responsible proposing institution under the laws of Panama, the text of the treaty is silent. This notwithstanding, it appears that this power is vested in the president of Panama. Thus, the Constitution provides:

Art. 164. The following powers shall be exercised by the President of the Republic with the cooperation of the respective Minister, the Cabinet Council or the National Legislative Council, as appropriate:

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8. To appoint, with the cooperation of the respective Minister and in accordance with the provisions of Title XII [of the Constitution], persons who are to hold offices or positions, appointment to which does not fall within the competence of any other public official or entity.

The President of the Republic may delegate his power of appointment to other officials as provided by law.

[Note: Title XII of the Constitution governs public employees in general, which under the provisions of article 258 are defined as "persons appointed temporarily or permanently to positions in the executive, legislative or judicial branches, the municipalities and autonomous and semiautonomous entities; and in general those who receive remuneration from the State."]

B. What is or will be the relationship of various Panamanian Government institutions to the Panama Canal Consultative Committee? The Joint Commission on the Environment?

The Panama Canal Treaty provides as follows concerning this question:

Article III. * * * 7. The Republic of Panama and the United States of America shall establish a Panama Canal Consultative Committee.* * * This Committee shall advise the Republic of Panama and the United States of America on matters of policy affecting the operation of the Canal. In view of both Parties' special interest in the continuity and efficiency of the operations of the Canal in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two governments which shall give them full consideration in the formulation of such policy decisions.

Article VI. 1. The Republic of Panama and the United States of America commit themselves to implement this treaty in a manner consistent with the protection of the natural environment of the Republic of Panama.* * *

A Joint Commission on the Environment shall be established with equal representation from the Republic of Panama and the United States of America, which shall periodically review the implementation of this treaty and shall recommend to the two governments, as appropriate, measures to avoid or, should this not be possible, to mitigate the adverse environmental impacts that might result from their respective actions pursuant to the treaty.

According to the above mentioned provisions, then, the role of the Panama Canal Consultative Committee, in general, is that of "advising the Republic of Panama and the United States of America on matters of policy affecting the operations of the Canal." The role of the Joint Commission on the Environment, charged with the periodic review of the implementation of the treaty, is that of "recommending to the two governments, as appropriate, measures to avoid or, should this not be possible, to mitigate the adverse environmental impacts that might result from their respective actions to the treaty."

In its implementation of the provisions of the Panama Canal Treaty, the Republic of Panama enacted Law 66 of September 19, 1978,[6] creating the Panama Canal Authority, an autonomous government agency. With regard to this inquiry, the following provisions of this law seem pertinent:

Art. 2. The principal objectives of the Authority are:

(a) To coordinate with the competent authorities and entities the adoption and implementation of measures to exercise the rights and carry out the responsibilities of the Nation under the Panama Canal Treaty of 1977 and its related agreements (hereinafter referred to as the Treaty).

* * * * * * *

(d) To participate in the Panama Canal Commission created by the Treaty.

Art. 3. In order to carry out its responsibilities, the Authority shall have the following particular functions:

(a) To provide advisory services, technical assistance and administrative support to the Executive branch in the establishment of policies and the adoption of measures or regulatins bearing on implementation of the Treaty through planning, coordination, administration and execution of plans, programs and activities;

(b) To serve as means of communication and liaison between national and United States agencies in the implementation of the Treaty.

* * * * * * *

(i) To order, pursuant to the policy established by the Executive, the actions to be followed and the votes to be cast by the Panamanian representatives on the Board of Directors of the Panama Canal Commission, the [Panama Canal] Consultative Committee and its subcommittees, the Joint Commission on the Environment, the Coordinating Commission and its subcommittees, the Combined Board and the Joint Committee and its subcommittees, established by the Treaty;

(j) To receive reports from the Panamanian representatives [accredited] before the agencies mentioned in the preceding paragraph, evaluate them and present its recommendations to the Executive at the proper time.

Art 7. The Panama Canal Authority shall be directed and administered by an Executive Committee and by a general director and a deputy general director and it shall have the administrative units necessary to carry out its responsibilities.

Art. 10. The following are the functions and powers of the Executive Committee:

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6. To determine the policy concerning the participation of the Panamanian members to the Board of Directors of the Panama Canal Commission, the [Panama Canal] Consultative Committee and its subcommittees, the Joint Commission on the Environment and the Coordinating Committee and its subcommittees, as well as to provide them with the pertinent instructions to be followed.

In view of the above, it appears that the Panama Canal Authority will be the Panamanian government agency in charge of acting as liaison between the Panamanian government agencies and the Panama Canal Consultative Committee and the Joint Commission on the Environment.

III. ENVIRONMENTAL AND WILDLIFE PROTECTION

According to the Index to Latin American Legislation, prepared in this Division, the Republic of Panama has enacted more than 30 statutes dealing directly or indirectly with the subject of environmental and wildlife protection since 1950. In addition, the Constitution of 1972, presently in force, contains the following related provisions:

Art. 228. Concessions for the exploitation of the soil, subsoil and forests and for the utilization of waters, means of communication or transportation and other public service enterprises, shall be based on the social welfare and the public interest.

Art. 255. The law shall regulate hunting, fishing and the exploitation of forests, to ensure their renewal and the continuation of their benefits.

The more important enactments on this topic may be subdivided and described as follows.

A. Forestry legislation.

Decree Law 39 of September 29, 1966,[7] basically provides that the protection, conservation, improvement and further growth of forest resources are declared obligatory, and for this purpose the exploitation and rational management of the nation's woods and forests, as well as those other renewable resources included in this system by the decree law, are declared to be of public interest and subject to the standards established in the respective regulations.

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[6] G.O.,Sept. 22, 1978.

[7] Gaceta Official [G.O.], Oct. 26, 1966.

The following are declared to be of national interest and to be fundamental objectives of the State—

To protect, conserve, increase, renew and exploit rationally the forestry wealth and resources of the country;

To incorporate into the national economy those lands that are not suitable for agriculture or cattle raising but that can support vegetation;

To prevent and control soil erosion;

To regulate and protect hydrographic basins and water resources in order to better exploit them;

To promote reforestation projects with a view toward establishing wooded areas for the protection of crops, and the protection and beautification of roadways, sanitary works, and recreation and tourism areas;

To promote, in cooperation with the highway services, the construction of all types of permanent or temporary roads integrated into the national road system which will permit economic access to forest zones for exploitation;

To conserve and increase the natural resources for hunting and river and lake fishing in order to obtain the maximum social benefit from these activities;

To promote the creation of forestry associations and cooperatives;

To promote the location, development and improvement of rationally conceived forestry industries, utilizing forestry raw materials to the utmost; and

To study, research and disseminate information concerning the nature of forests and their products.

Forest lands are defined as those which because of their agrological capacity possess a capability to be used for production of lumber and other forestry products, due to the beneficial implications or the protection of water systems and soils, or to their esthetic and recreational value. They are classified into two groups: (1) those destined for production, that is, those which when properly used provide an annual or periodic income, and (2) those used for the prevention of erosion for the following purposes—

To regulate water systems;

To protect the soil and agricultural crops, cattle enterprises, roads, river shores, brooks, lakes, islands, canals and reservoirs;

To prevent such phenomena as erosion, avalanches and floods; and

To provide habitat and protect species of the flora and fauna whose existence is declared necessary.

An additional category of land, called special lands, consists of those that for scenic, scientific, historic, touristic or recreational reasons are located on state lands or on lands which the state later may acquire for such purposes.

This Decree Law 39 also governs proceedings for concessions for the exploitation of forests; thus, plowing, clearing, burning and pasturing are prohibited without the authorization of the Forest Service, an agency responsible under the law for carrying out the provisions of the forestry legislation. Provisions concerning prevention of and fighting forest fires and control of plagues and diseases are also found in this law. In addition to the State, individuals are also obliged to contribute in one form or another to the prevention and control of fires and plagues affecting vegetation.

Articles 1625 through 1635 of the Administrative Code, approved by Law 1 of August 22, 1916, also contain provisions on the clearing of land for agricultural purposes, felling of fruit trees and medicine-producing shrubs, setting fire to fields of straw, savanna, woods or stubble that belong to a community, all of which require the issuance of a permit by the appropriate authority.

Decree Law 39 of 1966 also contains references to the relationship that the Forest Service should maintain with the Agrarian Reform Commission, so that the Commission takes into account in its plans and work projects the protection and conservation of water and soil, providing consistency among the agricultural, livestock and forestry plans in those places where agrarian reform work is to be undertaken.

The exploitation of forests may only be allowed after an inventory and work plan have been approved by the Forest Service and for a period of up to 5 years; however, extensions may be granted for 2 additional years when reasons of force majeure or of economics so justify.

The Forest Service is charged with the control of all exploitations and production related to forestry. On this basis the agents of the Forest Service have access to area under exploitation, to extraction routes, lumber yards and other installations. Finally, this law contains a list of fines to be imposed for the violation of its provisions.

B. Water legislation

Of like importance to the above mentioned Decree Law 39 of 1966 is Decree Law 35 of September 22, 1966,[8] which issues the regulations concerning the use of water and creates the National Water Commission. Territorial seas, lakes and rivers, ground water, hot springs and atmospheric (rain) waters found within the territorial limits of Panama are considered to be state-owned and for public use, and therefore may not be privately appropriated. All matters concerning waters are of public use or service, those that are used in municipal service or for agricultural, cattle raising, industrial, communications or other type of activity.

Among the functions vested in the National Water Commission are the following—

Planning and programming of everything concerning the appropriation, use, conservation and control of waters;
Promotion of irrigation projects;
Preparing and maintaining an inventory of the country's water;
Preventing and controlling the pollution of river and maritime waters; and
Establishing measures for the protection of hydrographic basins.

The exploitation of water resources can be made only by means of a concession for a profitable use, which is considered to be that use which is beneficial to both the concessionaire and the social interest. Users are obliged to maintain waters in an unpolluted state, and if danger of pollution should arise they must take the necessary corrective measures.

C. Fishing laws

The Fiscal Code approved by Law 8 of January 27, 1956,[9] articles 285 through 297, contains certain provisions concerning fishing that may be applicable to this inquiry:

(a) Licensing is required for commerical or industrial fishing;

(b) Fishing intended for sale for immediate consumption throughout Panama is reserved to Panamanian nationals;

(c) Fishing through the use of dynamite or any other explosive or through use of poisonous substances, as well as systems that interfere with navigation or the use of docks and ports, is prohibited;

(d) Fishing for mother-of-pearl shells is subject to a special regulation concerning the system by which it is carried out and concerning the license required. Only diving is permitted for this type of fishing, either scuba diving or by mechanical apparatus, and the use of dredges, scrapers or similar apparatus is expressly prohibited. Likewise mechanical diving equipment is not permitted in waters of less than 9 fathoms at the lowest tide;

(e) The capture of common turtles of less than 50 centimeters in length and of tortoiseshell turtles of less than 25 centimeters in length is prohibited.

Additional regulations on fishing are found within Decree Law 17 of July 9, 1959,[10] which classified fishing as follows:

(*a*) Subsistence fishing, that is, fishing whose primary purpose is food for the fisherman's family and neighbors, if this provides wages equivalent to that of a farmer. Such fishing is not done for sport, and is done with a casting net, harpoon or fishing line with no more than three hooks;

(*b*) Commerical fishing, that is, when its purpose is to provide the national market with fresh and dried fish;

(*c*) Industrial fishing, for export or for industrial processing;

(*d*) Scientific fishing, for purposes of research and study;

(*e*) Sport fishing, that is, done for recreation or exercise without any other purpose than the activity itself.

No alien not domiciled in Panama may be issued a fishing license to fish for shrimp, pearls or mother-of-pearl. The Ministry of Commerce and Industry is charged with the regulation and control of fishing through the Department of Fish and Related Industries and the National Fishing Laboratory, which are created by this law within the Ministry of Commerce and Industry. The law also creates the National Fishing Commission as an advisory agency. The following constitute general and special prohibitions concerning fishing—

No use of explosives;
No use of explosive substances or those poisonous to aquatic life, domestic animals or humans;

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[8] G.O., Oct. 14, 1966.

[9] G.O., June 29, 1956.

[10] No official date of publication is available.

No methods that pollute the waters, changing their quality for human use, for domestic animals or for irrigation;

No methods that interfere with navigation, use of ports and docks, passages in rivers, and other public ways;

No practices that upset the natural laws; and

No act of unnecessary cruelty toward aquatic animals.

Additional statutes on fishing are the following:

(1) Law 33 of January 30, 1961,[11] establishing economic measures for regulating and protecting fishing in Panamanian waters, and especially the taking and processing of shrimp;

(2) Decree 49 of March 12, 1965,[12] containing additional regulations on fishing;

(3) Decree 162 of June 6, 1966,[13] regulating shrimp fishing;

(4) Law 5 of January 17, 1967,[14] establishing economic measures for carrying out research to direct and protect fishing in Panamanian waters and regulating the issuance of fishing and sailing permits as well as the inspection of fishing vessels;

(5) Decree 13 of January 17, 1967,[15] prohibiting shrimping vessels over 20 gross tons that do not have a fishing license or have not submitted a request for renewal thereof and prohibiting the sale of marine products caught by them;

(6) Decree 50 of July 19, 1972,[16] providing that only those ships built in shipyards established in Panamanian territory may engage in shrimping in Panamanian jurisdictional waters;

(7) Decree 127 of July 28, 1964,[17] governing tuna fishing, provides that in order to engage in such fishing in Panamanian jurisdictional waters the owners of foreign vessels must secure a license issued by the Ministry of Commerce and Industry, or a license to fish issued by the Department of Fish and Related Industries, and, in such cases, a navigation permit issued by the Ministry of Finance and Treasury. The tune fishing permit is valid only during the tuna fishing season between September 1 and August 30 of the following year, and it gives the right to fish for tuna in both of the coastal territories of Panama;

(8) Decree 202 of October 14, 1965,[18] prohibiting the catching of any marine species within an area of 12 miles from the coast;

(9) Decree 168 of July 20, 1966,[19] containing regulations for the installation of fish meal plants and on the fishing of anchovy and herring for which a license is required, and listing the number of boats permitted to engage in these activities.

D. Other legislation

Other enactments that should be mentioned in the context of environmental and wildlife protection are as follows:

(1) Law 66 of November 10, 1947,[20] which approved the Health Code;

(2) Law 22 of September 28, 1950,[21] which concerns development and exploitation of natural resources;

(3) Law 3 of January 14, 1957,[22] which contains additional measures to protect natural resources;

(4) Decree 71 of February 26, 1964,[23] which regulates the location of industries that endanger public health;

(5) Decree Law 15 of May 18, 1967,[24] which contains provisions concerning infectious and contagious diseases of animals;

(6) Decree 384 of December 11, 1967,[25] on the manufacture, handling, warehousing, trafficking and use of poisons and pesticides used in agricultural work;

(7) Decree 1 of January 15, 1969,[26] creating the Ministry of Health;

(8) Decree 51 of November 20, 1968,[27] creating the Office for the Study of an Interoceanic Canal;

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[11] G.O., Mar. 9, 1961.

[12] G.O., Mar. 22, 1965.

[13] G.O., Aug. 1, 1966.

[14] G.O., Jan. 19, 1967.

[15] G.O., Mar. 21, 1967.

[16] Official text not available.

[17] G.O., Aug. 28, 1964.

[18] G.O., Oct. 22, 1965.

[19] G.O., July 24, 1966.

[20] G.O., Dec. 6, 1947.

[21] G.O., Oct. 9, 1950.

[22] G.O., Feb. 16, 1957.

[23] G.O., Apr. 3, 1964.

[24] G.O., May 30, 1967.

[25] G.O., Dec. 21, 1967.

[26] G.O., Feb. 4, 1969,

[27] G.O., Dec. 16, 1968.

(9) Decree 401 of December 29, 1979,[28] which creates health committees in several communities of the country;

(10) Decree 10 of January 27, 1972,[29] approving the Convention for the protection of flora and fauna and the natural scenic beauty of the Americas, signed in Panama on December 16, 1965;

(11) Law 17 of October 23, 1975,[30] approving the International Agreement on Civil Liability for damages caused by the contamination of sea waters by hydrocarbons, and its appendix, signed in Brussels on November 29, 1969;

(12) Law 2 of October 25, 1975,[31] approving the amendments to the 1954 International Agreement to prevent the contamination of sea waters by hydrocarbons, adopted by Resolution A-175 of October 21, 1969; and

(13) Law 14 of October 28, 1977,[32] approving the Convention on international trade of endangered species of the wild flora and fauna, signed in Washington on March 3, 1973.

IV. CRIMINAL LAW

A. How do the rights guaranteed by the Constitution and laws of Panama compare with the personal and civil rights contained in Chapter 3, Title 1, Canal Zone Code?

Fundamentally, the personal and civil rights contained in Chapter 3, Title 1 of the Canal Zone Code are found among the provisions of Title III, Chapter I of the Constitution of Panama of 1972, presently in force. A copy of these provisions, contained in articles 17 throught 50, is enclosed. Of special interest are the provisions contained in article 50, authorizing the suspension of constitutional rights in whole or in part in the event of foreign war or domestic disturbance threatening the peace or public order.

Article 197 of the Constitution established trial by jury; however, it also provides that a law shall determine the cases to be decided by this system. Under the provisions of the Judicial Code approved by Law 61 of September 30, 1946[33] in matters concerning criminal justice, trial by jury is only exceptional.

The courts involved in criminal cases are as follows: in exceptional cases, the National Assembly and the Supreme Court; in ordinary cases, the Superior Judge of the Republic, the circuit judges and the municipal judges, as the case may be (Judicial Code, art. 1987).

The parties involved are: (1) the accuser, that is, the person who brings charges against another. The accuser is a party to the case and is obliged to furnish the corresponding evidence to the court (art. 1993); (2) the denouncer, that is, the one who reports the commission of a criminal act to the the public authority, without making himself or herself a party to the proceedings or incurring in any obligation concerning the furnishing of evidence (art. 2007); (3) the Government attorney, in charge of prosecuting, ex officio, any criminal act (art. 2010); (4) the accused, that is, the person who has been indicted and is subject to the criminal proceedings (art. 2012); and (5) the defender, that is, the person in charge of defending the accused or indicted party (art. 2015). Under the laws of Panama, an indicted person is entitled to the appointment of a defender; should he or she not be able to afford one, the court shall appoint a defender, ex officio (art. 2016).

A criminal case is subject, in the first place, to investigation by the court (sumario). Thus, the courts are empowered to investigate the accused, to examine witnesses and expert witnesses, and to confront the accused or indicted person with witnesses or accusers (arts. 2063 through 2090). The accused or indicted person is also entitled, if her or she meets certain requirements, to be free on bail before trial (art. 2099). If there are no reasons to prosecute the charges, the case may be dismissed (sobreseimiento) (arts. 2146 through 2150). If the case goes to trail, the accused or indicted person is entitled to propose evidence, examine and cross-examine witnesses, furnish documents, and in general offer whatever evidence that may exonerate him or her (arts. 2151 through 2178). The court, after hearing the case, issues its written verdict, and if the accused or indicted is found guilty, imposes the corresponding sentence, in the same act (art. 2217). Sentences issued in criminal cases may be appealed at a superior court, and eventually may reach the Supreme Court in cassation.[34]

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[28] G.O., Jan. 26, 1971.

[29] G.O., Feb. 8, 1972.

[30] G.O., Jan. 29, 1976.

[31] G.O., Jan. 17, 1977.

[32] G.O., Jan. 27, 1978.

[33] *Gaceta Official* [G.O.], Oct. 2, 1946.

Exceptionally, Law 115 of March 26, 1943,[35] authorizes in certain cases the intervention of a jury in criminal trials. Among those are the following—

> Crimes that may have been committed by the secretaries of the ministries of State, the consuls of the Republic, circuit government attorneys (fiscales), chief administrators of post offices, inspectors of ports, and officials having command and jurisdiction in the provinces;
>
> Crimes committed at any time by persons who, at the time of the investigation of the case, hold any of the posts mentioned above;
>
> Contentious administrative proceedings where the nation or the municipalities are a party;
>
> Expropriation proceedings;
>
> Cases where nullity of judgments issued by the courts in first instance are tried;
>
> Crimes of treason; and
>
> Crimes of homicide and against the safety of the means of transportation and communication.

The accused in all these cases in entitled to waive his or her rights to trial by jury (art.1).

Substantive criminal law is found within the Criminal Code, enacted by Law 6 of November 17, 1922,[36] although some provisions have been amended by the enactment of subsequent statutes.

B. What provisions of Panamanian law will allow the Government of Panama to lend cooperation for enforcement of regulations of the Commission and rules of the Panama Canal Commission for "passage of vessels through the canal and other rules with respect to navigation and maritime matters?" Through what channels or by what mechanism would coordination be effected? (Paragraph 2, article III, Panama Canal Treaty)

Under the provisions of Law 66 of September 19, 1978,[37] the Republic of Panama established a government agency known as the Panama Canal Authority. Article 2 of this law provides:

Art. 2. The principal objectives of the Authority are:

(a) To coordinate with the competent authorities and entities the adoption and implementation of measures to exercise the rights and carry out the responsibilities of the Nation under the Panama Canal Treaty of 1977 and its related agreements.

* * * * * * *

(g) To study the problems of maintaining and operating the existing lock-type canal and its remaining lifetime as an efficient and profitable interoceanic waterway.

Art. 3. In order to carry out its responsibilities, the Authority shall have the following particular functions:

(a) To provide advisory services, technical assistance and administrative support to the Executive branch in the establishment of policies and the adoption of measures or regulations bearing on implementation of the Treaty through planning, coordination, administration, and execution of plans, programs, and activities;

(b) To serve as means of communication and liaison between Panamanian and United States agencies in the implementation of the Treaty.

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The language of these provisions seems to indicate that the Panama Canal Authority is empowered to coordinate with the Government of Panama the necessary cooperation for the enforcement of the regulations of the Commission and rules of the Panama Canal Commission for passage of vessels through the canal and other rules with respect to navigation and maritime matters.

C. In the Panamanian court system, how does the standing of the accused in law differ from such standing in the U.S. court system?

In general, under section IVA above, we have examined the civil rights that Panamanians have under the current Constitution. Special attention is called to the provisions contained in article 32 of the Constitution (copy enclosed), authorizing certain persons to impose penalties without prior trial and within the specific terms of the law.

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[34] Judicial Code, arts. 2225 through 2233, and Law 86 of July 1, 1941, on Cassation (G.O., July 18, 1941), arts. 41 through 49.

[35] G.O., Apr. 3, 1943.

[36] G.O., Dec. 8, 1922.

[37] G.O., Sept. 22, 1978.

The right to habeas corpus is acknowledged by article 22 of the Constitution and is further regulated by Law 46 of November 24, 1956.[38] Neither the Constitution nor the Judicial Code contain any specific provision as to the presumed innocence of the accused prior to conviction or acquittal.

D. What law now exists in Panama to effectuate the coordination that will be necessary in the area of criminal jurisdiction during the 30-month transition period?

In view of what has been stated in section IVB above, we presume that the Panama Canal Authority is the agency in charge of coordinating whatever will be necessary in the area of criminal jurisdiction during the 30-month transition period provided in the agreements.

E. Special treatment exists in the treaty's Article III implementing agreement for the commission of crimes in Panama by U.S. citizen employees and dependents. Five crimes are set out in Article XIX of this implementing agreement as crimes with respect to which Panama need not hand accused citizens over to the U.S. One of these five crimes listed is "crimes against the security of the Panamanian state." In Panama, what are considered crimes against the security of the state? What are the penalties for these offenses? Do the definitions of crimes make any delineation between Panamanian and non-Panamanian citizens?

No special statute has been located governing so-called "crimes against the security of the Panamanian state." Nevertheless, they appear to be included under the provisions of Title I, Book II of the Criminal Code, approved by Law 6 of 1922, articles 98 through 108, entitled "Crimes against the Fatherland." The crimes therein defined and the penalties to be imposed are the following:

Art. 98. Anyone responsible for an act having as its object to subject the Republic wholly or in part to a foreign power, to impair its independence or to weaken its unity shall be penalized by imprisonment for 20 years.

Art. 99. A Panamanian who takes up arms against Panama shall be penalized by imprisonment for 5 to 10 years.

If the guilty person has lost his or her nationality before committing the crime, the penalty shall be imprisonment for 8 months to 5 years.

Art. 100. Anyone engaging in intelligence with a foreign government or its agents for the purpose of producing hostilities or war against Panama, or aiding military operations of another nation against it, or performing any other act leading to these goals, shall incur imprisonment for 6 to 13 years, and if the criminal act or acts have had the result intended by the author thereof, the penalty shall be imprisonment for 20 years.

Art. 101. Anyone who reveals political, diplomatic or military secrets concerning the security of the nation, whether by communicating or publishing documents, reports, sketches, plans or other [secrets] relevant to military material, fortifications or operations, or by making them known in some other way, shall incur imprisonment or confinement for 8 months to 2 years and a fine of 300 to 500 balboas.

The penalty shall be imprisonment or confinement for 2 to 4 years with a fine of 500 to 600 balboas if the secrets are revealed to a foreign nation or its agents.

If the nations to which the secrets were revealed, either directly or through its agents, is at war with Panama, or if the revelation gives rise to a disturbance of friendly relations with another nation, the imprisonment or confinement shall be for 4 to 10 years and the fine, 800 balboas.

The penalty shall be increased by one-third if the guilty party possessed the sketches, plans or documents or had knowledge of the secrets by virtue of his or her status as a public official, or if violence or fraud were used to obtain the data or knowledge of the secrets.

The persons who obtain the data or secrets referred to in this article shall incur the same penalties assigned here, according to each case.

Art. 102. If the secrets referred to in the previous articles are divulged or the sketches, plans or documents made known through the carelessness or negligence of the officials entrusted with their custody, or of those who know such secrets, the guilty persons shall be penalized by confinement for 2 months to 1 year and a fine to 100 to 300 balboas.

Art. 103. Anyone who without legal authority, draws plans of fortifications, ships, roads or military works of any kind, or who for that purpose, clandestinely or by fraud, enters places where entrance by the public is prohibited by military authority, shall incur imprisonment or confinement for 4 to 20 months and a fine of 20 to 200 balboas.

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[38] G.O., Dec. 6, 1956.

The sole act of clandestinely entering these places shall be penalized by confinement for 1 to 6 months.

Art. 104. Anyone entrusted by the Government of Panama with negotiating matters of state with a foreign government who betrays his or her mandate in a manner which prejudices public interests shall incur imprisonment or confinement for 2 to 8 years.

Art. 105. The penalties assigned in articles 100 and following shall also be applied when the crime is committed in prejudice of a foreign nation with which Panama is allied or has ties of defensive and offensive solidarity during a war.

Art. 106. Anyone who, by means of entrapment or other hostile acts not approved by the government carried out within the territory of the Republic or abroad, exposes the Republic to danger of war, shall incur inprisonment for 2 to 7 years; if war results, the imprisonment shall be for 10 to 15 years.

If the acts included in the preceding paragraph only expose the Republic or its inhabitants to reprisals or only disturb friendly relations between the Panamanian government and a foreign government, the penalty shall be imprisonment for 2 to 20 months.

Art. 107. Any Panamanian or alien residing in Panama who, in time of war, directly or indirectly supplies the enemy or its agents with provisions or other means which could be used in prejudice of Panama, shall incur imprisonment for 1 to 4 years and a fine of 200 to 1000 balboas.

Art. 108. Anyone who despises, snatches, destroys or tears in a public place or in a publicly accessible place the national flag or any other emblem that symbolizes the Republic, shall be penalized with imprisonment of from 2 months to 1 year.

With the exception of what is provided in article 99 with regard to Panamanians, the above provisions do not make differentiation between Panamanians and aliens. Furthermore, the Constitution of Panama of 1972 provides:

Art. 15. Panamanian nationals as well as aliens who are within the territory of the Republic are subject to the Constitution and the laws.

An additional provision is found in the Consitution of Panama which subjects aliens to a treatment other than that to which nationals are entitled, for reasons of work, health, morality, public security, and the national economy; however, the wording of this provision sems to indicate that this kind of special treatment does not extend to the field of criminal law. It provides:

Art. 20. Panamanians and aliens are equal before the law, but for reasons of work, health, morality, public security, and the national economy, the law may subject to special conditions or deny the exercise of specific activities to aliens in general Likewise, the law or the authorities may, as the case may be, take measures that affect exclusively the nationals of specific countries in the event of war or in accordance with public treaties.

F. Has any mechanism been established in Panamanian law for implementing the double jeopardy provision of paragraph 8 of article XIX of the Agreement in Implementation of Article III of the Panama Canal Treaty?

No special legal mechanism has been located under the laws of Panama for implementing the double jeopardy provision of paragraph 8 of article XIX of the Agreement in Implementation of Article III of the Panama Canal Treaty. Perhaps, as mentioned above in section IVD, any conflicts that may arise on this ground will be submitted for the proper coordination and implementation to the Panama Canal Authority, which, under the provisions of article 3b of Law 66 of 1978, has the following functions, among others:

* * * * * * *

(b) To serve as a means of communication and liaison between Panamanian and United States agencies in the implementation of the Treaty.

However, it may also be argued that since this provision is part of the Agreement in Implementation of Article III of the Panama Canal Treaty, it is considered as the law of the land in Panama and as such, if an accused United States citizen employee or dependent has been tried in accordance with the provisions of that Article by the authorities of the United States or by the authorities of the Republic of Panama and has been acquitted, or has been convicted and is serving or has served sentence or has been pardoned, and is tried again for the same offense within the territory of the Republic of Panama, he or she may allege this provision of the Agreement as his or her defense, and the courts, theoretically at least, must accept it and dismiss the charges brought against that person.

TITLE III.—INDIVIDUAL AND SOCIAL RIGHTS AND DUTIES

Chapter I.—*Fundamental Guarantees*

Article 17.—The authorities of the Republic are instituted for the purpose of protecting all nationals in their lives, honor and property, wherever they may be, and aliens who are under its jurisdiction; of ensuring the effectivess of individual and social rights and duties; and of observing and enforcing the Constitution and the laws.

Article 18.—Private persons are responsible to the authorities only for violation of the Constitution or the law. Public officials are responsible for the same reasons, and also for exceeding their authority or for dereliction in the performance of their duties.

Article 19.—There shall be no personal privileges or distinctions or discrimination because of race, birth, social class, sex, religion or political ideas.

Article 20.—Panamanians and aliens are equal before the law, but for reasons of work, health, morality, public security and the national economy, the law may subject to special conditions or deny the exercise of specific activities to aliens in general. Likewise, the law or the authorities may, as the case may be, take measures that affect exclusively the nationals of specific countries in the event of war or in accordance with public treaties.

Article 21.—No one may be deprived of his liberty, except by virtue of a written order of a competent authority issued in accordance with legal formalities and for a reason previously defined by law. Those executing such orders are obliged to give a copy thereof to the interested person, if he requests it.

An offender surprised *flagrante delicto* may be apprehended by any person and must be delivered immediately to the authorities.

No one may be detained for more than twenty-four hours without being placed at the disposal of the competent authority. Public officials who violate this precept shall be punished by the loss of their employment, without prejudice to other penalties established by law for this purpose.

There shall be no imprisonment, detention or arrest for debts or purely civil obligations.

Article 22.—Any individual detained on grounds outside the cases or without the formalities prescribed by this Constitution or the laws, shall be placed at liberty on his own request or that of any other person through the remedy of *habeas corpus,* which may be sought by means of summary judicial proceeding immediately after the detention and without regard to the applicable penalty.

Article 23.—The State may not extradite its nationals nor may it extradite aliens who are sought for political offenses.

Article 24.—No one is compelled to testify in a criminal, correctional or police proceeding against himself, or against his spouse, or against any relative within the fourth degree of consanguinity or the second degree of affinity.

Article 25.—The domicile and residence are inviolable. No one may enter them without the consent of the owner, except by written order of a competent authority for specific purposes, or to assist the victims of a crime or disaster.

Labor, social welfare and health officials may, after prior notice, make visits or inspections of homes or working premises for the purpose of ensuring the observance of social and public health laws.

Article 26.—Every person may travel freely through the national territory and change domicile or residence without restrictions other than those which the traffic, fiscal, health, and immigration laws or regulations may prescribe.

Article 27.—The prison system is based on principles of security, rehabilitation and social protection. The application of measures injurious to the physical, mental or moral integrity of prisoners is prohibited.

Provision shall be made for the training of prisoners in trades which will enable them to reenter society as useful members.

Prisoners who are minors shall be subject to a special system of custody, protection and education

Article 28.—Correspondence and other private documents are inviolable, and may not be seized or examined except by order of a competent authority for specific purposes, in accordance with legal formalities. In all cases secrecy shall be maintained with respect to matters extraneous to the object of the seizure or examination.

Private telephone communications also are inviolable and may not be intercepted. The examination of documents shall always take place in the presence of the interested person or of a member of his family, or if they are absent, before two honorable residents of the same place.

Article 29.—There is no penalty of death, expatriation, or confiscation of property.

Article 30.—Only those acts shall be punished which have been declared punishable by law antedating their perpetration and precisely applicable to the imputed act.

Article 31.—No one shall be tried except by competent authority and in accordance with legal formalities, nor more than once for the same penal, police or disciplinary offense.

Article 32.—The following may impose penalties without previous trial and within the specific terms of the law: 1. Public officials exercising authority and jurisdiction, who may impose fines or arrest upon anyone who insults them or who is in contempt of their authority in connection with the discharge of their duties or by reason of their performance thereof; 2. Chiefs of the Public Forces, who may impose the penalty of arrest upon their subordinates in order to suppress an insurrection or mutiny or for an infraction of discipline; and 3. Captains of vessels or aircraft, who have the power when away from port to suppress as insurrection or mutiny or to maintain order on board, and to detain temporarily any actual or presumed offender.

Article 33.—In case of manifest violation of a constitutional or legal provision, to the detriment of any person, the order of a superior does not relieve the agent who executes it from liability. Exception is made of members of the Public Forces when they are in active service, in which case the responsibility rests with the superior in rank who gives the order.

Article 34.—The profession of all religions is free, as is the practice of all forms of worship, without any limitation other than respect for Christian morality and public order. It is recognized that the Catholic religion is that of the majority of Panamanians.

Article 35.—Religious organizations have legal capacity and they manage and administer their property within the limits prescribed by law, the same as other juridical persons.

Article 36.—Every person may freely express his opinion orally, in writing or by any other means, without subjection to prior censorship. However, legal liability shall be incurred when by any of these means the reputation or honor of persons is assailed or when social security or public order is attacked.

Article 37.—All inhabitants of the Republic have the right to assemble peacefully and without arms for lawful purposes. Outdoor demonstrations or meetings are not subject to permission. Only a previous notice to the local administrative authorities, twenty-four hours in advance, is required when they are to take place.

The authorities may take police measures to prevent or restrain abuses in the exercise of this right, whenever the form in which it is exercised causes or may cause disruption of traffic, breach of the peach, or violation of the rights of third parties.

Article 38.—The formation of companies, associations and foundations that are not contrary to morals or to the legal order is permitted. They may obtain recognition as juridical persons.

The capacity, recognition and regulation of companies and other juridical persons shall be determined by Panamanian law.

Article 39.—Every person is free to practice any profession or trade, subject to such regulations as the law may establish with respect to qualifications, morality, social welfare and social security, professional affiliation, public health, unionization and compulsory dues.

No tax or assessment shall be imposed on the practice of the liberal professions, trades, and arts.

Article 40.—Every person has the right to present respectful petitions and complaints to public officials, for reasons of social or private interest, and to obtain a prompt decision.

An official to whom a petition, inquiry or complaint is presented must decide it within a period of thirty days.

The law shall establish the penalties that apply to violations of this provision.

Article 41.—(As amended by Acts Nos. 1 and 2 of October 5 and 25 of 1978, respectively. Gaceta Oficial. November 16, 1978). The Ministers of religious faith, in addition to the functions inherent to their mission may only exercise those public posts related to social assistance, education or scientific investigation.

Article 42.—Laws do not have retroactive effect, except those of public order and of social interest when express provision is made therein. In criminal matters, a law favorable to the accused always has priority and retroactivity, even though the judgment may have become final.

Article 43.—Private property acquired in accordance with law by natural or juridical persons is guaranteed.

Article 44.—Private property implies obligations on the part of its owner by reason of the social function which it must fulfill.

For reasons of public utility or of social interest as defined by law, there may be expropriation pursuant to special judgment and with compensation.

Article 45.—When the application of a law enacted for reasons of public utility or social interest results in a conflict between private rights and the need recognized by the law itself, the private interest must yield to the public or social interest.

Article 46.—In the event of war, serious disturbance of the public order, or urgent social interest, requiring prompt action, the Executive may decree the expropriation or seizure of private property.

If the return of the seized object is feasible, the seizure shall be only for the duration of the circumstances that gave rise to it.

The State is responsible for all expropriations that the Executive thus carries out and for the losses and damage caused by the seizure, and shall pay the amount thereof as soon as the reason for the expropriaton or seizure ends.

Article 47.—No one is obliged to pay a tax or duty which has not been legally established and the collection of which is not made in the manner prescribed by the laws.

Article 48.—Every author, artist and inventor enjoys the exclusive ownership of his work or invention during the time and in the manner prescribed by law.

Article 49.—Every person against whom a public official shall issue or execute a mandatory order or an injunction violating the rights and guarantees established by this Constitution shall have the right to have the order revoked upon his own petition or that of any other person.

Protection of the Constitutional guarantees to which this Article refers shall be sought through summary proceeding and shall be within the jurisdiction of the courts of law.

Article 50.—In the event of foreign war or domestic disturbance threatening the peace of public order, all or part of the Republic may be declared to be in a state of siege, and the effects of Articles 21, 22, 25, 26, 28, 36, 37 and 43 of this Constitution may be temporarily suspended, wholly or in part.

V. PROVISION OF PUBLIC SERVICES

A. What is the process for the appropriation and expenditure of those funds dedicated to the public services that are provided by the Government of Panama? (Article III, paragraph 5, Panama Canal Treaty)

Concerning public finances, the Constitution of Panama of 1972, as amended, provides:

Article 235.—No public expenditure may be made that has not been authorized in accordance with the Constitution. Likewise, no item may be transferred to an object not included in the respective budget.

Article 236.—All receipts and disbursements of public funds must be included and authorized in the respective budget of revenue and expenditures. No revenues shall be collected through taxes unless established by law and no expenditures shall be paid unless included in the budget.

Article 237.—When it is necessary to make an expenditure for which insufficient funds or no funds have been voted, a supplemental or extraordinary appropriation may be granted to the respective ministry, autonomous or semiautonomous entity or state corporation. For this purpose, the National Legislative Council shall request an opinion from the Controller General of the Republic as to the practicability and suitability of said appropriation.

Article 238.—The execution or repair of national works, purchases made from state funds, funds of its autonomous or semiautonomous entities or of the municipalities, and the sale or lease of property belonging thereto, shall be effected by public bidding except in the cases specified by law.

The law shall establish measures to ensure in all bidding the maximum benefit to the State and full justice in the award.

Article 239.—There shall be an independent state agency known as the Office of the Controller General of the Republic. It shall be directed by a public official known as the Controller General, assisted by a deputy controller. They shall be appointed for a term concurrent with that of the President of the Republic, during which they may be suspended or removed only by the Supreme Court of Justice on grounds defined by law. Their appointment shall be effective on the first of January following each presidential election.

The qualifications to be controller or deputy controller of the Republic are: to be a Panamanian citizen by birth, to have reached 35 years of age, and not to have been convicted of an offense against the public order.

Article 240.—The functions of the Office of the Controller General, in addition to those prescribed by law pursuant to the preceding article, are the following:

1. To maintain the national accounts, including those of the internal and external debit;

2. To supervise, regulate and control all acts of management of funds and other public property, so that they will be executed correctly and as provided by law. The Office of the Controller General shall determine the cases in which it shall exercise both prior and subsequent control over the management of funds, and cases in which it shall exercise only the latter;

3. To examine, audit and close the accounts of public officials, persons or entities that administer, manage or safeguard funds or other public property. Matters pertaining to criminal responsibility are within the competence of the ordinary courts;

4. To conduct inspections and investigations in order to determine the regularity or irregularity of operations affecting public assets, and, if appropriate, to present the corresponding denouncements;

5. To request reports from public officials on the fiscal management of national, provincial, municipal, autonomous or semiautonomous entities;

6. To devise and promote the adoption of measures necessary to provide credits for public entities;

7. To request a declaration of unconstitutionality or illegality of laws and other acts in violation of the Constitution or the law which affect public assets;

8. To establish the accounting procedures of the public entities mentioned in section 5 of this article;

9. To report to the Executive on the financial condition of the public administration, and to submit opinions on the feasibility or desirability of granting supplemental or extraordinary appropriations;

10. To direct and compile the national statistics;

11. To appoint the employees of its departments, in accordance with the Constitution and the law;

12. To present annual reports on its activities to the Executive and the National Assembly; and

13. To audit the accounts of financial officers and employees when complaints are made as to alleged irregularities in such accounts.

The basic law governing whatever pertains to public financial matters is Law 8 of January 27, 1956,[1] known as the Fiscal Code of the Republic. Concerning appropriation and expenditure of funds for public services, this code provides:

Article 1118.—The Budget of Expenditures shall be divided into whatever sections may be necessary.

Article 1119.—The expenditures that must be made for the service of the public debt, those concerning loans, unforeseeable expenses, the shares and assistance that the State must pay to autonomous institutions, and other expenditures of a similar nature shall be included in the section on various expenditures *(gastos varios).*

The chapters shall represent the several units of their respective organizations, and with regard to the section on various expenditures, it shall include the several units therein included.

The articles shall represent the individual purposes and objects of the expenditures for which appropriations are needed.

The chapters shall be consecutively numbered with Roman numerals. The articles shall be marked in Arabic numerals.

Article 1121.—The amount authorized in each article of expenditure included in the budget must be exclusively applied to that determined object as it appears in the text of the article, and that amount cannot be exceeded, except if it is amended by additional credits authorized under Chapter VII of this title [of the Fiscal Code].

Finally, concerning supervision of the National Treasury, the code provides:

Article 1164.—The Office of the Controller General of the Republic shall carry out its missions of supervising, regulating, watching and controlling the movement of the public treasures as well as of examining, checking, revising and intervening in the public accounts, pursuant to what is provided in the Constitution and in the organic law [of the Controller General].

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[1] G.O., June 29, 1956.

B. Various provisions in the Panama Canal Treaty and related agreements will cause the Panama Canal Commission to utilize utilities and services available in Panama. For utilities, what are the basic rate-setting procedures and structure in Panama, and what kind of costs are recovered through rates? (e.g., paragraph 4, Article X of agreement implementing Article III)

Two constitutional provisions related to public utilities must be considered when dealing with this question:

Article 244.—The majority of the capital of public utility enterprises operating in the country must be Panamanian, with the exceptions permitted and defined by law.

Article 245.—The State shall create public utility enterprises through autonomous or semiautonomous entities or by other suitable means. In the same manner, it shall assume ownership, by expropriation and indemnification, of public utility enterprises belonging to private persons, when authorized by law and necessary for the collective welfare.

This Library does not have detailed information about the basic rate-setting procedures and structure in Panama related to public services. This notwithstanding, Decree 20 of December 30, 1976, which may be used as a guideline, approved the new electric rates, including certain increases, to be charged by the Instituto de Recursos Hidráulicos y Electrificación (IRHE) (Institute of Hydraulic and Electric Resources). The decree approved the establishment of five different basic tariffs for those areas served by the utility and a provisional tariff for the areas of Chiriquí and the Central Provinces of the country. Tariff 1, for instance, which the decree calls Tariff 11–P, is applicable only to residential properties as of January 1, 1977, throughout the country, except for the province of Chiriquí, where it entered into force on September 1, 1977. The current to be furnished by the utility is to be alternate single phase current of 60 hertz, and a voltage of 120 or 120/240 or 120/208 volts, depending on the kind of service. In certain instances three-phase current may be furnished. The charges authorized by the decree are as follows:

	Charge (in balboas)
First 10 kilowatt/hours or less	B 1.10
Each additional kilowatt/hour up to an additional 30 kilowatt/hours	.10
Each kilowatt/hour for the next additonal 30 kilowatt/hours	.085
Each kilowatt/hour for the next additonal 50 kilowatt/hours	.065
Each kilowatt/hour for the next additonal 300 kilowatt/hours	.055
Each kilowatt/hour for the next additonal 600 kilowatt/hours	.06
Each kilowatt/hour in excess of 1,000 kilowatt/hours	.07

The minimum charge is B 1.10.

The decree also authorized changes in the tariff due to variations in the cost of fuel. Adjustments shall be made on a monthly base, in multiples of .001 balboas per kilowatt/hour, as a result of the application of the following arithmetic operation:

Barrels of fuel consumed divided by Invoice cost equals (P−11.00).

Where P is the average cost in balboas for a 42-gallon barrel of fuel used in the production of electricity in all the IRHE plants during the 4-month period prior to the invoicing period. "Barrels of fuel consumed" and "invoice cost" are, respectively, the average of those items during the 4-month period prior to the invoicing period.

The same type of adjustment described above was authorized for the other four tariffs approved by this decree.

VI. LAND USE AND ZONING

Licensing of land within the canal area is discussed in Article IV of the Agreement Implementing the treaty's Article III. What are the qualifications, restrictions and conditions which apply to land licensing by Panama?

The Constitution of Panama of 1972 contains certain provisions regarding the law on property which may be pertinent to this inquiry:

Article 43.—Private property acquired in accordance with the law by natural or juristic persons is guaranteed.

Article 44.—Private property implies obligations on the part of its owner by reason of the social function which it must fulfill.

For reasons of public utility or social interest, defined by law, there may be expropriation pursuant to special judgment and with compensation.

Article 45.—When the application of a law enacted for reasons of public utility or social interest results in a conflict between private rights and the need recognized by the law itself, the private interest must yield to the public or social interest.

Article 46.—In the event of war, serious disturbance of the public order, or urgent social interest requiring prompt action, the Executive may decree the expropriation or seizure of private property.

The Civil Code of Panama contains some general provisions on this topic, which evidently are subject to the more limited interpretation on property rights as accorded by the present Constitution. The code provides: [1]

Article 337.—Property is the right to enjoy and dispose of a thing with no limitations other than those established by the law.

The owner [of a thing] has the right to recover it from a possessor.

Expropriation proceedings are governed by the provisions of law 114 of March 17, 1943.[2]

No further provisions concerning licensing of land under Panamanian laws have been located.

VII. DEFENSE

A. Which institution exercises legal authority over the National Guard of Panama? What is the nature of the authority? What powers are exercised by the Commander of the National Guard forces as compared to the President? Are any special powers designated for the commander of the canal's Panamanian defense force?

With regard to the National Guard of Panama, the Constitution of 1972 contains the following provision:

Article 269.—The national defense and public security shall be the responsibility of an institution called the National Guard. Its functioning and salary scale shall be regulated by law.

Law 44 of December 23, 1953,[1] created the National Guard of Panama. Pertinent provisions of this law state:

Article 1.—The National Guard is hereby created. Therefore, as of the time of enforcement of the present law, the National Police Corps shall bear this [new] name which shall also be understood to appear in every law, decree or regulation of any kind where the name of the National Police Corps appears.

Article 2.—The following are the functions of the National Guard: 1. To keep public order; 2. To protect natural persons and property; 3. To prevent [the commission of] crimes and other violations of the law and to persecute and capture those who violate the law.

Article 3.—The President of the Republic is the Supreme Chief of the National Guard. His orders shall be transmitted through the Ministry of Government and Justice.

The law also provides that for the purposes of the services rendered by the National Guard, the Republic is divided into zones, which in turn are subdivided into provincial sections. Zones are under the command of a major and sections under that of a captain (art. 5). The capital of the Republic which is in the first zone is subject also to the police activities of the Guard (art. 7). Of particular interest to this inquiry appear to be the following provisions:

Article 17.—The jeering, insulting or verbal abuse of any member of the National Guard in uniform shall be penalized, after the act has been duly proved, with non-commutable arrest from 5 to 35 days, notwithstanding the criminal responsibility [incurred by the offender], if any.

Article 18.—Anyone who is required to go to the National Guard headquarters, to the office of the mayor or to that of the *Corregidor,* or to any other public office, and refuses to obey [that request], or while in transit resists reaching his or her destination, shall be penalized with non-commutable arrest of up to 40 days, notwithstanding the liability his or her refusal may have caused. The same penalty shall be imposed upon anyone who collectively or individually opposes the arrest of a person.

Finally, it must be mentioned that article 277 of the Constitution of Panama of 1972 granted to General Omar Torrijos Herrera, Commander in Chief of the National Guard, recognition as Maximum or Supreme Leader of the Panamanian Revolution, and as such he was authorized to exercise the following powers for a period of 6 years: To coordinate all work of the public administration; to freely appoint and remove the ministers of state and members of the Legislative Commission; to appoint the controller general and deputy controller general of the Republic, the general directors of autonomous and semiautonomous entities, and the magistrate of the Electoral Court to be appointed by the Executive, as provided in the Constitution and the law; to appoint the chiefs and officers of the public forces in accordance with the Constitution, the law and the Military Register; to appoint with the approval of the Cabinet Council the magistrates of the Supreme Court, the attorney general of the Republic, the solicitor general and their alternates; to approve the execution of contracts and the negotiation of loans; and to direct foreign relations.

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[1] Approved by Law 2 of Aug. 22, 1916, G.O., Aug. 22, 1916, and in force as of Oct. 1, 1917 (Decree 95 of June 1, 1917, G.O., June 4, 1917).

[2] G.O., Mar. 29, 1943.

[1] G.O., Dec. 24, 1953.

General Torrijos was further empowered to attend meetings of the Cabinet Council and the National Legislative Council with voice and vote and to participate with voice in the deliberations of the National Assembly of Municipal Representatives, the provincial coordinating councils and the community boards. Since the Constitution of 1972 took force on October 11, 1972, these extraordinary powers vested in General Torrijos apparently have lapsed (art. 272). We have no record that these powers have been extended.

B. Paragraph 10, Article IX of the treaty states that Panama and the United States will cooperate to guarantee the security of the Panama Canal Commission. What laws has Panama enacted in this respect?

No special statutory provisions specifically directed by Panama to guarantee the security of the Panama Canal Commission have been located since the date of approval of the Panama Canal Treaty.

VIII. LABOR LAW

A. Several provisions of the treaty (including paragraphs 3(d) and 4, Article X) concern transmission of information on licensing of professional personnel in Panama. What is the procedure for obtaining a license for a professional or craft skill in Panama?

With regard to academic and professional degrees, the Constitution of Panama provides as follows:

Article 39.—Every person is free to practice any profession or trade, subject to such regulations as the law may establish with respect to qualifications, morality, social welfare and social security, professional affiliation, public health, unionization and compulsory dues.

No tax or assessment shall be imposed on the practice of the liberal professions, trades and arts.

Article 93.—Only academic and professional degrees issued by the State or authorized by it in accordance with law are recognized. The official University of the Republic shall supervise the officially approved universities to guarantee the degrees they issue, and shall revalidate those of foreign universities in the cases prescribed by law.

In general, in order to qualify for the practice of a profession a university degree issued by a national university is required. In some cases foreign university degrees are acknowledged in the country after revalidation; in other cases foreigners are allowed to practice their profession on the basis of reciprocity. Information concerning some of the more important professions for which statutory material has been located follows.

1. *Attorney.*—Under the provisions of Law 54 of May 27, 1941,[1] in order to practice the legal profession a certification as to the applicant's qualification shall be issued by the Supreme Court (art. 1). The Court shall issue a certificate in the following cases:

(a) To Panamanians holding a degree in law from the National University, from the former National School of Law *(Facultad de Derecho Nacional)*, or from any acknowledged educational center issuing officially acknowledged degrees;

(b) To Panamanians who were graduated from a foreign university who have attended the prescribed courses and passed the corresponding examination;

(c) To those persons who prove that they are qualified to hold the posts of magistrate or associate judge of the Supreme Court, of magistrate or associate judge of the Superior Tribunals of the judicial district, of attorney general of the nation, of government attorney in a judicial district or of judge or government attorney of a judicial circuit;

(d) To those citizens of the United States of America duly authorized to practice law in the Canal Zone, provided that in that Zone the practice of the legal profession is authorized to persons duly certified by the Supreme Court of the Republic;

(e) To Panamanians who, at the time of enforcement of this law, have registered in the Ministry of Education the degree or diploma of *Licenciado en Derecho* issued by an accredited foreign institution, in addition to a degree of secondary education or from a university;

(f) To those Panamanians by birth who are duly authorized to practice law in the Canal Zone, and to the holders of the degree of *Licenciado en Derecho y Ciencias Sociales* issued by the Free University of Panama, prior to the enforcement of this law, and duly registered in the Ministry of Education prior to the enforcement of this law;

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[1] G.O., June 2, 1941.

(g) Panamanians who, by virtue of the provisions of the final paragraph of article 166 of the Constitution in force in 1941, are qualified to hold the post of magistrate of the Supreme Court.

In addition, the Supreme Court shall issue a qualification certificate to those who at the time of enforcement of this law held the posts of secretary, minister or undersecretary of State or to those who have held such post for more than 4 consecutive years, to those who held the post of secretary to the governor for more than 10 consecutive years, and to the secretaries of the National Assembly who have worked more than 4 years in a circuit court in positions not lower than that of official mayor and who, in addition, have performed the functions of a notary public (art. 3).

Law 51 of November 24, 1961,[2] amended the above law so that the Supreme Court would thenceforth issue the corresponding certification only to the applicants mentioned in items a and b above, and to those who, under the provisions of article 166, final paragraph of the Constitution in force at the time of the enactment of the law, qualified for the post of magistrate of the Supreme Court.

2. *Physician.*—Cabinet Decree 196 of June 24, 1970,[3] governs the practice of the medical profession in Panama. The following qualifications are established by law:

(a) To be Panamanian;

(b) To hold a medical degree issued by a national university or by a foreign university duly acknowledged and certified;

(c) To have fulfilled the first year of rotatory internship in any of the hospitals listed in the law. If internship was done in a foreign hospital, it shall be duly acknowledged in Panama; and

(d) To have fulfilled and been approved in the second year of internship somewhere in the interior of the Republic.

3. *Journalist.*—This profession is regulated pursuant to the provisions of Law 57 of September 19, 1978.[4] To practice this profession, the following is required: (a) the corresponding degree in communications issued by a national university or by a foreign university. In the latter case, the degree must be revalidated in Panama; or (b) the practice of the profession, prior to the enforcement of this law, for no less than 5 years; or (c) to have had, at the time of this law's enforcement, 3 continuous years of practicing this profession and to continue to work until the term of 5 years is met. Revalidation in Panama shall not be required in those cases where it is not necessary according to international treaties or agreements.

4. *Public Accountant.*—Law 57 of September 1, 1978,[5] regulates the practice of this profession in Panama. Such practice requires a license that is issued to those meeting the following requirements:

(a) To be a Panamanian citizen;

(b) To have a university degree with specialization in accounting issued by the University of Panama or other university institutions acknowledged by the State, or by foreign university institutions acknowledged by the University of Panama;

(c) To be not subject to criminal proceedings for crimes committed against the public faith or against property; and

(d) Not to have been convicted of a crime against the public faith or against property during the 5 years preceding the date of application for license.

5. *Laboratory Technician.* Law 74 of September 19, 1978,[6] governs the practice of this profession. The following persons qualify to practice as laboratory technicians:

(a) Those who have the degree of *Licenciado en Biología* with specialization in medical technology, issued by the University of Panama or by an equivalent national or foreign university;

(b) Those who, at the time of the enactment of this law, have legally practiced in a clinic laboratory; and

(c) Those who have proved to be duly qualified before the Technical Laboratory Board *(Junta Técnica de Laboratoristas)* and who have legally practiced this profession until the time of enforcement of this law.

As of the time of enforcement of this law, in order to obtain an appointment as laboratory technician, the following is required: (a) to be Panamanian; (b) to have a certification issued by the Technical Laboratory Board; and (c) to have a license to the free exercise of the profession issued by the Technical Council of Health.

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[2] G.O., Nov. 30, 1961.

[3] G.O., July 3, 1970.

[4] G.O., Sept. 27, 1978.

[5] G.O., Sept. 28, 1978.

[6] G.O., Oct. 9, 1978.

6. *Architect, engineer* and *land surveyor.*—These professions are governed by Law 15 of January 26, 1959, as amended by Law 53 of February 4, 1963.[7] Regulations are found in Decree 257 of September 3, 1965.[8]

Other than the requirement of a university degree and a license to practice, no further information is now available regarding the practice of these professions.

B. What are the basic requirements for Panamanian licenses, permits or classifications for driving, vessel operation, air piloting, amateur radio operation, etc.? Article XIV of the agreement implementing Article III of the treaty makes renewal of such licenses subject to Panamanian law and regulations.

1. *Drivers' licenses.*—The issuance of drivers' licenses is governed by the provisions of Decree 275 of August 21, 1969.[9] Although no additional information is available as to the types of licenses, in general the General Traffic Office is the Government agency in charge of issuing drivers' licenses. To qualify for such licenses an applicant must be at least 18 years of age and of good conduct, as shown by a certificate issued by the National Department of investigations; must prove his or her ability to drive a car; and must have committed no serious traffic violation which would disqualify him or her. If these requirements are met a driver's license is issued to be effective for a period of 4 years, after which it must be renewed.

2. *Vessel operation.*—No information is available in this office regarding statutory material governing the technical requirements for the operation of vessels. Of particular interest to this inquiry is the provision contained in article 266 of the Labor Code,[10] which provides that Panamanian vessels doing international service must have a crew composed of no less than 10 percent Panamanian nationals or foreigners married to Panamanians or having children of Panamanian mothers, provided such foreigners are domiciled in Panama.

3. *Air pilots.*The Panamanian Air Code contains general provisions of the technical requirements to license air pilots.[11] The Civil Aeronautics Administration issues and revalidates licenses and certificates of ability pursuant to what is provided in regulations issued by the Executive (not now available in this office). The Civil Aeronautics Administration may recognize or revalidate licenses and certificates issued in a foreign country by competent authorities, provided the requirements under which they were issued or declared valid are at least equal to the minimum standards required by Panamanian regulations for the issuance of such a license or certification, and provided that the country in question will recognize and revalidate similar licenses issued in Panama. The crew and other technical flight personnel in the service of any domestic aviation enterprise and of commercial and transport aircraft registered in Panama must be of Panamanian nationality. However, airlines may utilize the services of foreign technicians until technically qualified Panamanian personnel can be trained, which must be done within a period of 1 year.

For aerial work such as crop dusting, field-hopping flights and the like, the executive branch may issue provisional permits to foreign pilots who come to the country to perform such work temporarily, provided no Panamanian personnel are available for such services.

4. *Amateur radio operation.* Decree 469 of February 20, 1950,[12] regulates in Panama the operation of amateur radio stations. Article 4 of this decree provides that licenses shall be issued solely to Panamanian nationals; nevertheless, in special cases they may be issued to foreigners residing in the country while under contract with the Government or if reciprocity with their respective countries exists. There are three kinds of licenses: Class A, Class B and Class C.

Class A. The following requirement must be met in order to obtain a Class A radio license: (a) to be at least 18 years of age; (b) to be capable of transmitting and receiving Morse coded messages at the rate of ten words per minute: (c) to show ability concerning the operation, functions and repair of transmitting equipment; and (d) to know the national and international regulations concerning amateur radio. This license authorizes its holder to operate telegraphy or telephony amateur radio bands of up to 1000 watts.

Class B.—The requirements mentioned above under a, b and d must be met, and in addition the applicant must prove his or her ability to operate the transmitting equipment. This license authorizes its holder to operate telegraphy or telephony amateur radio bands of up to 35 watts.

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[7] G.O., Feb. 6, 1963.

[8] G.O., Nov. 19, 1965.

[9] G.O., Sept. 2, 1969.

[10] Approved by Cabinet Decree 252 of Dec. 30, 1971, G.O., Feb. 18, 1972.

[11] Approved by Decree Law 19 of Aug. 8, 1963, G.O., Sept. 18, 1963.

[12] G.O., Feb. 28, 1950.

Class C.—Applicants must prove their ability to operate the transmitting equipment and that they know the national and international regulations on amateur radio. This license empowers its holder to operate telephony in the 160, 80 and 40 meter bands, with a maximum power of 100 watts.

Class A and class B licenses are valid for a 3-year period, and this term is extendable. Class C licenses are valid only for an unextendable period of 1 year. Licenses for the operation of broadcasting stations are valid for an extendable period of 2 years.

C. What are the major rights and benefits enjoyed and the major "contractual" obligations of employees of the Panamanian Government?

With regard to Government employees, the Constitution of Panama provides as follows:

Article 261.—The rights and duties of public employees, as well as the principles governing appointment, promotion, suspension, transfer, dismissal, separation and retirement, shall be established by law.

Appointments of career personnel shall be based on the merit system.

Public employees are obligated to personally discharge their functions, to which they shall dedicate their maximum capabilities and for which they shall receive a fair remuneration.

Article 262.—Public employees may not receive two or more salaries paid by the State, except in special cases determined by law, nor may they hold positions with simultaneous work periods.

The pensions of public employees shall be based on actuarial studies and reasonable budgetary allocations.

Employees of the Panamanian Government are subject to the provisions of Law 4 on the Civil Service of January 13, 1961.[13] Basic provisions of this law applicable to this inquiry state:

Article 45.—The following are the rights of those employees having adminstrative career status:

(a) Stability in the performance of their duties. Career employees may be removed only by a given cause determined by law and by means of the proceedings established in said law and the regulations issued for that effect;

(b) The right to promotion to posts of higher rank and salary after [the employee's] efficiency and merits are duly proved;

(c) The right to a just salary that allows him or her decent living conditions in accordance with the functions he or she performs;

(d) The right to rest. The employee shall enjoy annual paid vacations and sick leave, maternity leave and leave to take courses and further training, as provided in the law and the regulations.

Article 46.—The following constitute the obligations of the employees of the [Government] offices incorporated into the Civil Service:

(a) To respect and loyally obey the Constitution, the law, the regulations and other provisions dealing with their work;

(b) To attend their work punctually, in accordance with their working hours and with the official time of their respective offices;

(c) To perform their work in a regular manner and with the dedication that the nature of that work requires;

(d) To obey the orders and instructions given them by their superiors and to perform the additional work assigned by them, in accordance with the needs and priorities of the service;

(e) To show dignity in the performance of their duties, and to have a private conduct that does not offend the public order and morality and diminish the prestige of the institution.

No specific provision concerning "contractual" obligations of Government employees are found in the law.

D. Contractors working for the Panama Canal Commission are subject to the laws and regulations of Panama Except as otherwise indicated in the treaty (Article XI of agreement implementing Article III of the treaty). What specific laws and regulations of Panama apply to contractors? What is the nature of the insurance cited in paragraph 7 of Article XVIII of the agreement implementing Article III of the treaty?

Contractors, as such, are not governed by any special Panamanian law; they are bound by the same laws that bind any employer. Articles 59 through 74 of the Constitution of Panama (enclosed) contain the basic constitutional provisions on matters concerning labor law in that country to which contractors are bound. In addition, the provisions of the Labor Code must also be complied with.[14]

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[13] G.O., Feb. 28, 1961.

The Labor Code, in force since April 2, 1972, contains 1067 articles, divided into chapters, titles and books. Among the major topics covered by the code are the following:

Individual relations between the worker and the employer; General regulations on protection of labor rights; Placement of workers; Working hours, right to vacations, regulations of the labor contract, and regulations on protection of workers; Right to work of women and minors; Rights and obligations of employers and workers; Salary and its regulations; Protection of inventions; Changes in the labor contract; Termination of labor contracts; Regulations concerning domestic, ambulatory and field workers; Work in transportation companies; Work at sea and in navigable ways; Work in coastal navigation and in fishing enterprises; Apprenticeship; Work health and liability in matters concerning occupational hazards; Reemployment of workers; Right to unionize; Regulations on unions; Regulations on labor bargaining; Right to strike and illegal strikes; and Labor procedures, appeals and nullities.

Additional statutory material in general pertinent to this inquiry are the following:

1. Decree 536 of December 13, 1965,[15] concerning revision of wages by either the employer or the employees;
2. Decree 562 of September 13, 1966,[16] concerning enforcement of the regulations on minimum wages; and
3. Decree 53 of November 1, 1971,[17] fixing the minimum wage in different locations.

No special statutory material or regulations have been located with regard to the nature of the insurance cited in paragraph 7 of Article XVIII of the agreement implementing Article III of the treaty.

A reading of this provision seems to indicate that the insurance shall cover the civil liabilities that may be incurred in the territory of the Republic of Panama as a result of acts or omissions done or occurring in the performance of official duty by the employees of contractors or subcontractors. We have not yet received any standards for such insurance, which, in compliance with this provision, must be established by the Coordinating Committee, nor have we received any regulations to this effect issued by the Panamanian Government.

CONSTITUTION OF PANAMA, 1972

Chapter III.—Labor

Article 59.—Work is a right and a duty of the individual. The State is obliged to devise economic policies to promote full employment, and to ensure to every worker the conditions necessary for a decent existence.

Article 60.—Every worker in the service of the State or of public or private enterprises or of private individuals is guaranteed a minimum wage or salary. Employees of the enterprises determined by law shall participate in the profits thereof, in accordance with the economic conditions of the country.

Article 61.—The law shall establish the method of periodically adjusting the minimum wage or salary, in order to meet the ordinary needs of the worker's family and to improve its standard of living, in accordance with the particular conditions of each region and each economic activity. It may also determine the method of fixing minimum salaries or wage by profession or trade.

For work by the job or piece, it is obligatory that the minimum wage for a working day be assured.

The minimum of any wage or salary is unattachable except for obligations of support in the manner prescribed by law. The working tools of workers are likewise unattachable.

Article 62.—An equal wage or salary shall always be paid for equal work under identical conditions, regardless of the person who performs it, without distinction as to sex, nationality, age, race, social class, or political or religious ideas.

Article 63.—The right of union organization is recognized for employers, employees and professionals of all classes for the purposes of their economic and social activity.

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[14] *Supra* note 10.

[15] G.O., Mar. 28, 1966.

[16] G.O., Oct. 24, 1966.

[17] G.O., Nov. 1, 1971.

The Executive shall have an unextendable period of thirty days to approve or deny the registration of a union.

The law shall regulate all matters pertaining to Executive recognition of unions. The registration shall determine the legal personality of the union.

The Executive may dissolve a union only when it deviates permanently from its purposes and a competent court so declares in a final judgment.

The boards of directors of such associations shall be composed exclusively of Panamanians.

Article 64.—The right to strike is recognized. The law shall regulate its exercise and may subject it to special restrictions in those public services that it may designate.

Article 65.—The maximum working day is eight hours, and the working week may be up to forty-eight hours. The maximum duration for night work shall not be more than seven hours. Overtime shall be remunerated with extra payment.

The maximum working day may be reduced to six hours for those over fourteen and less than eighteen years of age. All work is forbidden for those under fourteen, and night work is forbidden for those under sixteen, except in cases specified by law. The employment of persons under fourteen years of age as domestic servants and work by minors and women in unhealthful occupations are likewise prohibited.

In addition to weekly rest, every worker shall be entitled to paid vacations. The law may prescribe the paid weekly rest in accordance with the economic and social conditions of the country and the benefit of the workers.

Article 66.—All provisions that imply a waiver, diminution, modification or relinquishment of any right recognized in favor of the worker are void, and consequently do not bind the contracting parties even though stated in a labor agreement or in any other pact. The law shall regulate all matters pertaining to labor contracts.

Article 67.—The maternity of working women is protected. A woman who is pregnant may not be separated from public or private employment for this cause. During a minimum of six weeks preceding childbirth and eight weeks thereafter she is entitled to compulsory rest with the same remuneration as she was paid while working, and shall retain her employement and all rights provided in her contract. Upon resumption of work by the mother she may not be discharged for one year, except in special cases prescribed by law, which also shall regulate the special working conditions of pregnant women.

Article 68.—The contracting of foreign workers which may worsen the working conditions or living standards of national workers is prohibited. The law shall regulate the contracting of foreign managers, administrative and executive directors, technicians and professionals for public and private services, in all cases ensuring the rights of Panamanians and in accordance with the national interest.

Article 69.—No worker may be discharged without just cause and without the formalities prescribed by law. The law shall specify the justifiable causes for discharge, special exceptions and the corresponding indemnification.

Article 70.—The State or the private firm shall provide free occupational training for workers. The law shall regulate the manner in which this service is provided.

Article 71.—Trade union training is established. It shall be imparted exclusively by the State and by Panamanian trade union organizations.

Article 72.—All controversies that originate between capital and labor shall be submitted to the labor jurisdiction, which shall be exercised in the manner prescribed by law.

Article 73.—The law shall regulate relations between capital and labor, placing them on a basis of social justice and providing special state protection for workers.

Article 74.—The rights and guarantees established in this chapter shall be considered as minimums in favor of workers.

X. SOCIAL SECURITY SYSTEM

What does the present Panamanian law provide as to unemployment compensation and benefits for those who are severed or retired from government employment? What indication is there that such law will apply to former employees of the Panama Canal Commission?

The basic law governing social security is Law 134 of April 27, 1943,[1] Under article 2(a) of this law, government, provincial and municipal employees as well as those of autonomous or semiautonomous entities are compulsorily included under its provisions. There is a voluntary social security system for self-employed workers and others no longer covered by the compulsory system.

The law provides the following basic benefits:

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[1] G.O., May 14, 1943.

1. *Temporary incapacity.*—If as the result of a labor accident or occupational disease the worker is temporarily incapacitated for work and therefore does not receive wages, so long as he or she has not been declared permanently incapacitated the worker has a right to a daily cash subsidy in an amount equal to his or her wages during the first 2 months, from the first day of incapacity, and to 50 percent of that same wage until, according to medical opinion, the worker is able to return to work or it is stated that the treatment provided no longer is advisable.

2. *Permanent incapacity.*—The degrees of permanent incapacity are determined according to the evaluation table for incapacity of each type of injury, taking into account such factors as age, habitual occupation and effects the injury may have on the worker's obtaining future employment.

3. *Illness.*— In cases of illness social security provides for medical, surgical, dental and pharmaceutical attention and hospitalization as well as a subsidy for temporary disability if the illness results in incapacity for work. Such benefits are provided for insured members who have paid at least two monthly quotas during the 4 months preceding the application for benefits. This also includes the spouse and children under 6 years of age. A woman with whom a deceased worker had lived for 5 or more years also may qualify.

4. *Maternity.*—An insured female worker who has met the prescribed requirements is entitled to a subsidy for maternity during the 6 weeks preceding and 8 weeks following childbirth.

5. *Disability and old age.*—The pension payable for disability or old age consists of 50 percent of the monthly wages plus the equivalent of 1 percent of the basic monthly wages for every 12 months of quotas that an insured member has contributed in excess of the first 120 months of quotas. The pension is increased by 10 balboas when a male pensioner has a spouse and when a female pensioner has a spouse who is incapacitated, and 5 balboas for each child under 14 years of age (or 18 years of age if a student) or of any age if incapacitated. But in no case shall the total paid in these categories be more than 50 balboas monthly.

6. *Death benefit.*—When a labor accident or occupational disease causes the death of the insured, the persons indicated below have a right to a pension:

(a) Widows: a life pension equivalent to 25 percent of the wages of the deceased. If she is the only beneficiary or if she is an invalid, the pension increases to 30 percent;

(b) Children: pension up to 18 years of age, or for life if they are invalids, as follows: 15 percent of the wages of the deceased if there is only one minor child, 25 percent if there are two, 35 percent if there are three and 40 percent if there are four or more;

(c) Mother: a pension equivalent to 20 percent of wages for 10 years, or 30 percent of such wages if there are no surviving children;

(d) Father: a pension equivalent to 20 percent of wages for 10 years if he is an invalid or at least 60 years of age;

(e) Other benefits: a pension equivalent to 10 percent of wages for a 6-year period for each ascendant or collateral relative up to the third degree inclusive who is over 60 years of age or incapacitated, and who was economically dependent upon the insured, provided that the total of the pensions herein mentioned does not exceed 30 percent of the worker's wages.

The total amount of pensions set out above may not exceed 75 percent of the wages of the deceased worker. A widow's pension ceases if she remarries or lives with a man as his wife. A fixed amount is paid by social security for funeral expenses. A minimum of 50 balboas is fixed for disability and old age pensions and a maximum of 500 balboas for disability, old age and survivor's pensions.

No additional benefits are found in this law. Furthermore, the sources available in this office do not reveal whether express indications exist under Panamanian law concerning the future applicability of the provisions of the law on social security to employees of the Panama Canal Commission.

XI. RIGHTS OF OWNERSHIP

Under the new treary arrangement, Panama will obtain title to housing now owned by the Panama Canal Company. Some U.S. citizen canal employees have expressed a desire to purchase the housing in which they now live. Are there currently provisions of Panamanian law providing for the sale of government-owned housing to private citizens? If any such programs exist, what are the qualifications for eligibility? What nationality restrictions exist?

At the present time, with the exception of what is provided in article VI, paragraphs 4 and 5 of the agreement on implementation of article III of the Panama Canal Treaty, we do not know of the existence of any implementing law or regulation instituted by the Panamanian government for the sale of government-owned housing to private citizens. However, in the event that Panama obtains title to housing now owned by the Panama Canal Company and that some U.S. citizen canal employees wish to purchase the houses in which they now live, the following provisions of the Fiscal Code may be applicable:[1]

Article 23.—The Executive may sell, pursuant to the rules [provided] in this Title, personal and real property owned by the State which in his judgment are not necessary for public services, provided that the value of said property does not exceed 5,000 balboas.

The sale of personal or real property valued in excess of 5,000 balboas shall require the authorization of the legislative body. If the authorization does not state the manner in which [said property] is to be transferred, the provisions of this Title shall apply.

Article 25.—In the cases of sales or leases of national property, the value of the property or the price of the lease shall be determined by expert [evaluation] pursuant to the rules set in article 17 of this Code.

Under the provisions of article 29 of the Fiscal Code public bidding is required for sales contracts executed by the State where the property involved exceeds the value of 1,000 balboas. According to article 17 of the Code, the evaluation of the property must be undertaken by three experts.

Concerning restrictions or limitations to the sale of state real property to foreigners in general, the provisions of article 250 of the Panamanian Constitution must be observed. It provides:

Article 250.—Foreign natural or juristic persons and national juristic persons having full or partial foreign capital may not acquire ownership of national or private lands situated less than 10 kilometers from the borders.

Island territory may be transferred only for specific purposes of national development and under the following conditions:

1. When it is not classified as a strategic area or reserved for government programs;
2. When it is declared to be a special development area and legislation has been enacted for its development, provided that the national security is guaranteed.

The alienation of island territory does not affect state ownership of goods for public use.

In the preceding cases, legitimately acquired rights existing at the time this Constitution becomes effective [i.e., October 11, 1972] shall be respected, but the property in question may be expropriated at any time upon payment of adequate compensation.

XII. ADMIRALTY

Panama will assume some jurisdiction over legal cases involving admiralty questions under the new treaty arrangement. What are the bases and what are the principles or any more specific provisions of admiralty law which may exist?

The principal features of maritime law and shipping regulations in Panama are covered by the provisions of articles 1077 through 1553 (Book II) of the Commercial Code of that country.[2] These provisions govern, basically, ownership and transfer of vessels, priority of liens thereon, liabilities of owners and captains, rights and obligations of officers and crew, maritime contracts, bills of lading, marine insurance, average, collision and shipwrecks.

Rules and regulations concerning registration of vessels in Panama are covered by the following: (1) Law 8 of January 12, 1925;[3] (2) Law 54 of December 11, 1926;[4] (3) Decree 40 of March 24, 1954;[5] (4) Cabinet Decree 45 of February 14, 1969;[6] (5) Law 11 of January 25, 1973;[7] (6) Decree 95 of September 12, 1974;[8] (7) Law 5 of February 25, 1975;[9] (8) Law 49 of August 8, 1975;[10] and (9) Laws 39, 40, 50, 63 and 64 of 1976.[11]

The maritime laws of Panama are generally framed on the old European maritime laws, but are very favorable to steamship companies. No fixed schedule of wages or food is provided; Lloyd's and other ship surveyor certificates, including official annual inspection certificates, are accepted by the Government. Registration fee is US $1 per net registered ton for the first 100,000 tons with minimum of US $250; 50 cents per net registered ton for vessels of 100,000 to 500,000 tons; and 20 cents per net registered ton for vessels over 500,000 tons. This tariff applies to fleets of vessels to be registered under one owner or under several corporations controlled by one financial group, in which event registration shall be paid over total tonnage of fleet plus US $20 for a temporary navigation patent and US $25 for a permanent one. Inspection fee is US $300 for up to 5,000 gross tons and US $500 above that amount. Annual tax is 10 cents per net registered ton.

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[1] Approved by Law 8 of Jan. 27, 1956, G.O., June 29, 1956.
[2] Adopted by Law 2 of Aug. 22, 1916, G.O., Aug. 22, 1916.
[3] G.O., Jan. 23, 1925.
[4] G.O., Dec. 18, 1926.
[5] G.O., Dec. 2, 1954.
[6] G.O., Mar. 3, 1969.
[7] G.O., Feb. 7, 1973.
[8] G.O., Sept. 23, 1974.
[9] G.O., Mar. 17, 1975.
[10] G.O., Sept. 3, 1975.
[11] No official citations are now available.

Ship mortgages are acknowledged as liens on the vessels. Registration fee is 11 cents per net registered ton of vessel with a maximum limit of U.S. $550.

Under the provisions of the Labor Code,[12] 10 percent of the crew must be Panamanians or foreigners domiciled in Panama having Panamanian spouses or Panamanian children.

Title deeds to vessels must be recorded in the Mercantile Registry, the fee set at 22 cents per net registered ton.

Under the provisions of article 708(e) of the Fiscal Code,[13] revenues arising from international maritime commerce by national merchant vessels legally registered in Panama are declared tax exempt, even if the contracts were executed in the country.

Cases on admiralty are adjudicated in ordinary courts; however, contrary to what occurs in common-law jurisdictions, the decisions of the courts do not constitute binding precedent to third parties unless three similar decisions issued by the court of cassation over the same legal issue exist.[14] This would constitute what in Hispanic jurisdictions is known as *jurisprudencia,* which in turn may be overruled by the enactment of a new law.

XIII. NONPROFIT INSTITUTIONS

A. What are the major provisions of law that apply to nonprofit institutions in Panama? Is the nonprofit concept similar or identical to that applied in the U.S.?

The concept of nonprofit institutions in Panamanian law is briefly acknowledged within the country's Civil Code.[15] Provisions pertinent to this inquiry state:

Article 64.—The following are juristic persons:

* * * * * * *

(2) The churches, religious congregations, communities or associations.

* * * * * * *

(5) Nonprofit associations of private interest duly acknowledged by the executive power.

Article 66.—Churches, religious communities, congregations or associations shall be governed by their respective charters (*cánones*), constitutions or rules. However, in order for them to enjoy juristic personality, they must be acknowledged by the executive power, who shall make such acknowledgment with no other limitation than that concerning respect to Christian morality and the public order; and provided that their principles, precepts and practices are not contrary to the Constitution or the laws of the Republic.

Article 69.—The legal capacity of the associations referred to in paragraphs 5 and 6 of article 64 [of this code] shall be governed by their bylaws, provided they have been approved by the executive power.

Consequently, in view of these provisions, the acknowledgment by the executive power of the existence of churches, religious communities, congregations or associations as well as of duly organized nonprofit associations of private interest, is essential for the legal functioning of these organizations in Panama.

Article 708(c) of the Fiscal Code states that churches of any form of worship, seminaries and religious or welfare associations are expressly excepted from payment of taxes when the revenues they obtain are directly related to the religion or to welfare.[16]

B. According to the terms of the treaty (paragraph 5 of article III) [sic], the cost of purchase of land for nonprofit institutions "will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama." What are the rules that currently apply in Panama?

The provisions contained in article IX, paragraph 5 of the Panama Canal Treaty, which are apparently of concern here, state:

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[12] Adopted by Cabinet Decree 252 of Dec. 30, 1971, G.O., Feb. 18, 1972.

[13] Enacted by Law 8 of Jan. 27, 1956, G.O., June 29, 1956.

[14] As provided under art. 3 of Law 86 of July 1, 1941, G.O., July 18, 1941.

[15] Approved by Law 2 of Aug. 22, 1916, G.O., Sept. 7, 1916 [Reprint].

[16] Enacted by Law 8 of Jan. 27, 1956, G.O., June 29, 1956.

With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches and fraternal organizations, *the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama* [emphasis added].

The transfer of property that belongs to the Panamanian nation is governed by provisions contained in the Fiscal Code. Under its article 23 the Executive may sell, pursuant to the rules provided in the corresponding title of the Code, personal and real property owned by the State which in his judgment is not necessary for public services, provided the value of the property does not exceed 5,000 balboas. For the sale of property which exceeds that value, authorization of the legislative branch of the Government is required. Article 25 of the Code provides that the value of the property or the value of the lease shall be determined by evaluation by three experts according to the rules set under article 17 of the Code. Furthermore, under article 250 of the Constitution of Panama, foreign natural or juristic persons and national juristic persons having foreign capital in whole or in part may not acquire ownership of national or private lands situated less than 10 kilometers from the borders. Additional restrictions are provided in that article regarding island territories.

In view of the above, it is difficult to conciliate the provisions of article IX, paragraph 5 of the Panama Canal Treaty that "the cost of purchase will be nominal * * *" with those of the Constitution and the Fiscal Code quoted above. Nevertheless, a solution to this apparent conflict may be offered by article 58(7) of the Fiscal Code which states:

Article 58.—A bidding shall not be necessary for the following contracts:

* * * * * * *

(7) Those which, because of the nature of the act, as authorized by a special law, shall not require bidding.

In other words, perhaps through the enactment of special or private laws where the conditions of the transaction appear, a nominal or token cost of purchase may be stipulated. The property located within the zones determined in article 250 of the Constitution would remain, of course, beyond the possibility of being included within the provisions of any public or private law.

Mr. HUBBARD. With these studies now in the record, Mr. Foy, we will hear your testimony.

Thank you for being with us.

STATEMENT OF H. MILES FOY, ATTORNEY-ADVISOR, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE.

Mr. FOY. Thank you, Mr. Chairman.

I have prepared a written statement discussing five questions.

The first concerns the constitutionality of the Panamanian participation on the Panama Canal Commission.

The second, the effect of the treaty on the Federal income tax liability of U.S. citizens in the Canal Zone.

The third, the extent of U.S. authority during the transition period.

The fourth, the legal consequences of a failure to enact implementing legislation.

And the fifth, the constitutionality of payments to Panama by the Commission in the absence of appropriations for such payments.

With the committee's permission, I will not read this statement, but will submit it for inclusion in the record, and make comments on it.

Mr. **Hubbard**. No objection. Thank you.

[The following was submitted for the record:]

Statement of H. Miles Foy, Attorney-Adviser, Office of Legal Counsel, Department of Justice

Mr. Chairman: I want to thank the committee for inviting the Department of Justice to participate in these hearings. You have asked us to comment on ten specific questions involving legal aspects of the proposed implementing legislation and the Panama Canal Treaty itself. In these prepared remarks I will focus on five of these questions: (1) the constitutionality of Panamanian participation on the Panama Canal Commission, (2) the effect of the treaty on the federal income tax liability of U.S. citizens in the Canal Zone, (3) the extent of U.S. authority during the transition period, (4) the legal consequences of a failure to enact implementing legislation, and (5) the constitutionality of payments to Panama by the Panama Canal Commission in the absence of "appropriations" for such payments.

CONSTITUTIONAL QUESTIONS SURROUNDING PANAMANIAN PARTICIPATION ON THE PANAMA CANAL COMMISSION

As you know, Panama will assume administrative and legislative jurisdiction over the Canal Zone on October 1, 1979, but Panama will not assume full responsibility for managing the canal itself until the end of the century. Until then, the United States will manage the canal through a new agency called Panama Canal Commission.

The treaty establishes a framework for an orderly transition to full Panamanian control by the year 2000. It provides that Panamanians will participate in the management and operation of the canal from the outset. The intent is that by the end of the century Panamanian policy-makers, managers, and employees will be in place and will be fully prepared to assume the responsibilities that will devolve upon Panama when the treaty terminates.

Panamanian participation will take a number of different forms. The treaty and the ancillary agreements provide that Panamanians will participate on bilateral committees, that the Panama Canal Commission will employ Panamanians "at all levels," that until 1990 the Deputy Administrator of the Commission will be a Panamanian proposed by Panama for appointment to that position by the United States, and that after 1990 the Administrator of the Commission will be a Panamanian proposed and appointed in the same way. Finally, and more significantly, the treaty provides that four of the nine members of the governing board of the Commission will be Panamanians proposed by Panama for appointment to the board by the United States and subject during their tenure to removal at the request of Panama.

The provisions regulating the selection, appointment and removal of the Panamanian board members have given rise to several constitutional questions. The basic question is whether these provisions comport with the clauses of Article II of the Constitution that regulate the appointment and removal of "Officers of the United States." Does Article II allow us to establish an arrangement under which candidates for appointment to public office will be proposed by a foreign nation (Panama)? Can "Officers of the United States" be subject to removal at the request of a foreign nation? Can foreigners (Panamanians) be Officers of the United States?

These questions are based on an assumption—the assumption that the Panamanian board members will indeed be "Officers of the United States" in the Article II sense. I want to examine that assumption. Unless the treaty itself, the Constitution, or some other law makes these Panamanians "Officers of the United States" or requires us to regard them as such, we need not test the manner of their selection or removal against the requirements of Article II.

The treaty provides that the Panama Canal Commission will exercise the powers that devolve upon the United States under the treaty. Whenever they concur with the American majority, the Panamanian minority on the board will participate in the exercise of those powers; but the manifest intention of the treaty is that they will represent, not the interests of the United States, but the interests of Panama. They will of course be bound by the treaty, which is a law of the United States, but their function will be to represent the views of a foreign nation, our partner in this joint enterprise.

Are these Panamanians "Officers of the United States" in the Article II sense? The Supreme Court has not given us a precise definition of that constitutional phrase. We know that "Officers of the United States" are persons engaged "in the administration and enforcement of public law," see *Buckley* v. *Valeo*, 424 U.S. 1, 141

(1975); but in the reported cases we find little guidance beyond that general pronouncement. The safest course is to examine Article II itself. It contains no actual definition, but it sheds light on the question by implication. For example, it provides that "civil Officers of the United States" will be subject to removal from office on impeachment for, and conviction of, "treason." Because a person cannot commit "treason" unless he "owes allegiance" to the sovereign against whom the treason is committed, see *Young* v. *U.S.*, 97 U.S. 39 (1877), Article II appears to contemplate that Officers of the United States will be persons who "owe allegiance" to the United States under our law. I should add that one does not have to be a citizen of the United States in order to "owe allegiance" to the United States in this sense; but the basic point still holds. Article II appears to contemplate that Officers of the United States will be persons whose basic loyalty is to this country and whose basic objective in the performance of their duties is to advance the interests of this country.

I return to the question at hand. Does this treaty contemplate that the Panamanian board members will be "Officers of the United States" in the constitutional sense? We think it does not. Their primary allegiance will be to Panama, and their function under the treaty will be to represent Panamanian interests during the transition to full Panamanian control.

This brings us to the nub of the matter. The real question here is whether this treaty can give a voice in the control of the canal to persons who are not "Officers of the United States" in the constitutional sense. The answer to that question is yes. As implemented by the legislation establishing the Commission (enacted pursuant to Congress' undoubted power under Article IV), this treaty can transfer control over the Panama Canal to Panamanians. Indeed, the treaty itself is sufficient. That issue, or an issue very much like it, was resolved last Spring by the Court of Appeals for the District of Columbia Circuit in *Edwards* v. *Carter* (opinion filed April 17, 1978). There the Court of Appeals held that the disposition of our interests in the Canal Zone is a proper subject for negotiation between this Nation and Panama, that this subject is therefore within the treaty power, and that our interest may therefore be transferred to Panama by treaty. This decision was supported by the history of the treaty cause, by treaty practice, and by the weight of scholarly authority.

If the Constitution permits us to give control of the Panama Canal to Panamanians, we think there can be no substantial constitutional question that control can be transferred as contemplated by this treaty—that is, by first giving Panama a voice, but not a controlling voice, in the operation of the canal, by employing Panamanians in increasing numbers to do the actual work involved in the operation of the canal, and then by transferring full control to Panama at the end of the century.

I will conclude this discussion by emphasizing the point I have just made. If the United States entered into a treaty with, say, Canada, providing that the Secretary of Defense would be a Canadian proposed by Canada and subject to removal at the request of Canada, the constitutional problem with that arrangement would be fundamental. Control over the Department of Defense cannot be transferred to a foreign power by treaty or by any other law. That control must be exercised by an individual who owes allegiance to the United States and is subject to the full administrative power of the United States; and in constitutional terms this means that he must be an "Officer of the United States" in the sense contemplated by Article II. Control over the Panama Canal, however, can be constitutionally transferred to Panama. That is the critical point. Control over the Panama Canal can be placed in the hands of Panamanians who are not Officers of the United States in the constitutional sense, and this is what the Panama Canal Treaty is designed ultimately to do.

I have two final points. First, the preceding analysis should not be taken to suggest that the Administrator and Deputy Administrator of the Commission are on the same legal footing as the Panamanian Board members. They are fully subject to U.S. control and are responsible to us. Second, the approaches taken in the Administration's bill and in Chairman Murphy's bill differ on the question of the mode of appointment of the board members. The Administration's bill provides that they will be appointed by the President. Chairman Murphy's bill provides that they will be appointed by the President with the advice and consent of the Senate. For the reasons I have just given, neither of these modes of appointment presents a constitutional problem with respect to the Panamanian members; but I should add that to the extent that the advice and consent requirement seems to suggest that the Panamanian members must answer to us in their opinions and policies, this arrangement seems inconsistent with the theory upon which the treaty is based. Our remedy is to exercise control through the American majority. I note that on this point both the Administration's bill and Chairman Murphy's bill provide explicitly that the board can take no action in the absence of an American majority.

EFFECT OF THE TREATY ON THE FEDERAL INCOME TAX LIABILITY OF U.S. CITIZENS IN THE CANAL ZONE.

Article XV, paragraph 2, of the Agreement in Implementation of Article III of Panama Canal Treaty contains the following provision:

"United States citizen employees and dependents shall be exempted from any taxes, fees, or other charges on income received as a result of their work or the [Panama Canal] Commission. Similarly, they shall be exempted from payment of taxes, fees, or other charges on income derived from sources outside the Republic of Panama."

One question that has arisen in the past few months is whether this provision provides these employees and dependents with an exemption from income taxation by the United States. The answer to that question, in our view, is clearly no. There are three reasons for this conclusion, and I will discuss them briefly below.

First, the pre-ratification history of the treaty and the ancillary agreements demonstrates that the United States and Panama simply did not intend to create such an exemption. We have been informed by the Legal Adviser of the Department of State that it is clear from the still classified negotiating history of the treaties that both sides understood that employees of the Commission who were citizens of the United States would be exempt from income taxation by Panama but would continue to be subject to income taxation by the United States. Moreover, that understanding was brought to the attention of the Senate while the Panama Canal treaty and the Neutrality Treaty were pending before the Senate. The view expressed by the Department of State at that time was that the parties had intended to exempt United States citizens from Panamanian taxation of income received by them as a result of their work in Panama or income received by them from sources outside Panama. This was the view adopted by the Senate Committee on Foreign Relations, and it is the view that should guide our interpretation of the implementing agreement.

Secondly, if this agreement were construed to create an exemption from income taxation by the United States, it would be in conflict with statutes of the United States contained in the Internal Revenue Code. But this agreement has not itself received the approval of the Senate under the treaty clause. For that reason alone, even if one were to assume arguendo that the parties intended to create an exemption from U.S. taxation, there is substantial doubt that their agreement could be given effect as a matter of domestic law in the face of the conflicting statute.

Finally, the very nature of the agreement is inconsistent with the argument that the parties must have intended to provide these employees and dependents with an exemption from income taxation by the United States. The agreement is analogous to a status of forces agreement. Its purpose is to protect U.S. personnel stationed abroad from foreign requirements that may conflict with requirements imposed upon them by the United States. Agreements of this kind frequently exempt U.S. Personnel from foreign taxation, foreign licensing requirements, and the like. But it would be wholly inconsistent with their essential nature if they were construed to extinquish, not only foreign duties, but duties owed to the United States. We do not construe this agreement in that way.

EXTENT OF U.S. AUTHORITY DURING TRANSITION PERIOD

Under the original treaty of 1903 the United States obtained the right to exercise plenary administrative and legislative jurisdiction over the Canal Zone just as if the United States were sovereign over the Zone. The new treaty will establish a new relationship. The Canal Zone itself will disappear, and Panama will ultimately resume full administrative and legislative jurisdiction over the territory lying within the Zone.

Just as the treaty makes provision for an orderly transition to full Panamanian conrol over the operations of the canal itself, it makes provision for an orderly resumption by Panama of full municipal authority over day-to-day affairs within the former Zone. That transition will occur in the following way:

Panama will assume plenary jurisdiction throughout the former Zone when the treaty enters into force—that is to say, on October 1, 1979, but the United States will retain jurisdiction in certain cases. For what purposes will the United States retain jurisdiction? The treaty provides that (1) the United States will retain the right to exercise jurisdiction in criminal cases for any offenses committed prior to the entry of the treaty into force against the laws of the United States applicable in the Canal Zone; (2) with respect to U.S. citizen employees of the Panama Canal Commission and their dependents, the United States will retain the right to exercise primary criminal jurisdiction over offenses committed within the areas and installations reserved for our use after the entry of the treaty into force and before the close of the 30-month transition period; (3) with respect to civil cases, the Unted States will retain jurisdiciton to dispose of any civil cases actually pending when the treaty enters into force; and (4) to enable the United States to exercise these powers, the courts of the United States will remain in operation for the full 30-month period; the United States will retain the right to amend its laws and regulations for the purposes of exercising its transitional authority; and if there are any cases still pending at the end of the transition period, the two countries will enter into appropriate agreements regarding the disposition of those cases.

To the extent that the continued operation of U.S. law during the transition period will require the exercise of executive or legislative as opposed to judicial authority, that authority, under the Administration's bill, will be vested in the Panama Canal Commission as a successor to the Canal Zone Government. Under Chairman Murphy's bill that authority would be vested in the President. I should add that otherwise the approaches taken in the implementing legislation on this issue are substantially the same, although Chairman Murphy's bill contains a potentially useful savings clause making it clear that U.S. law will remain in effect to the extent not inconsistent with the treaty for the purpose of enabling the U.S. to exercise the jurisdiction reserved by it under the treaty during the transition period.

I want to say a word about what happens at the end of the transition period. First, members of the United States Armed Forces and members of the civilian component and their dependents will be subject to a status of forces agreement, the Agreement in Implementation of Article IV of the Panama Canal Treaty. United States citizen employees of the Panama Canal Commission and their dependents will be subject to a somewhat analogous agreement, the Agreement in Implementation of Article III of the Panama Canal Treaty. Second, as I have already suggested, the judicial power of the United States in the Canal Zone, as well as the executive and legislative powers associated with municipal government in the Canal Zone, would go out of existence altogether at the end of the transition period. Any pending cases would be disposed of by agreement. Any U.S. prisoners presently incarcerated in the Canal Zone jails would be transferred prior to the entry of the treaty into force to facilities in the United States to complete their terms. Under a recently negotiated prisoner exchange agreement, which will be submitted to the Senate for approval, Panamanian prisoners or third country nationals in former Canal Zone jails could elect to complete their sentences in Panamanian jails if Panama agreed, or otherwise they would be transferred to U.S. prisons.

FAILURE TO ENACT IMPLEMENTING LEGISLATION

You have asked us to comment on legal effect of a failure to enact implementing legislation. That question is an interesting one from a legal standpoint, but it is so complex—the potential legal consequences of a failure to enact implementing legislation are so various—that I feel I must address the issue in general terms.

A treaty is not simply an international obligation of the United States. It is a law of the United States. Whenever it purports to be operative without the aid of implementing legislation, it is operative as positive law. It is binding as law on the Officers of the United States, and it is equal in dignity to an act of Congress. When it enters into force, it repeals or supercedes prior treaties, statutes or regulations that are inconsistent with it.

Many, perhaps most, of the provisions of the Panama Canal Treaty are self-executing; and when the treaty enters into force on October 1, 1979, these provisions will become part of our law. This will happen whether or not implementing legislation is enacted. These provisions will be binding on Officers of the United States. They will supplement existing law. They succeed or supplant existing treaties, statutes or regulations that are inconsistent with them.

Now for good reason, the treaty makers did not attempt to deal with all of the matters that must be dealt with if the objectives of this treaty are to be achieved in an orderly fashion. That is why implementing legislation is required. In the absence of implementing legislation, the treaty will go into effect. It will operate on our law, changing it; and yet the treaty will not leave us with a complete legal structure for the conduct of our affairs in the former Canal Zone. The Officers of the United States would be obligated to discharge whatever duties would devolve upon them under this incomplete body of law, and they would be entitled to exercise whatever authority this body of law would confer. But they would be dealing with an imperfect legal structure.

We simply cannot forecast what the results would be. If our basic policy interest is to ensure that the Canal will be operated in an orderly and efficient fashion and to protect the personal interests of the U.S. citizens who are employed in the Zone or draw their livelihood from the operation of the Canal, the results would surely be undesirable, whatever form they might take.

DIRECT PAYMENTS TO PANAMA ABSENT "APPROPRIATIONS"

When Assistant Attorney General John harmon testified before this committee last year, he addressed, at the committee's request, the question whether the various payments to Panama contemplated by the treaty could be made in the absence of an act of Congress authorizing them to be made. His conclusion, in essence, was that public money, i.e., money collected for the use of the United States, see 31 U.S.C. 484, cannot be paid out to satisfy treaty obligation except pursuant to legislation enacted by Congress. In reaching this conclusion, he relied upon Article I, section 9 of the Constitution, which provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law," upon the special constitutional status of the House of Representatives in fiscal matters, and upon treaty practice. That opinion is still the opinion of the Office of Legal Counsel.

Now the committee has asked how "direct payments to Panama by the Panama Canal Commission under Article XIII of the Treaty" would "relate to Article I, section 8, cl. 9" of the Constitution "without enactment of appropriations." The Canal Treaty deals with payments to the Republic of Panama in Article III, section 5 and Article XIII, section 4. Article III, section 5, provides that the Panama Canal Commission shall pay the Republic of Panama $10,000,000 per annum in order to reimburse it in providing certain public services to the Commission. The Administration contemplates that this annuity will be financed out of Canal revenues. Similarly, Article XIII, section 4 provides that the Republic of Panama shall receive from the Panama Commission certain additional payments "to be paid out of Canal operating revenues."

As I have said, we envision that the Article III payments will be made out of Canal revenues, but this would not alter the application of the rule I have described. Those revenues, or that portion of them, will be received by the Canal Commission subject to applicable law, and the corresponding payments will therefore have to be made pursuant to legislation. Lawyers might argue over some elements of the additional payments required by Article XIII, but in my opinion the same conclusion would obtain with respect to some of them, and perhaps with respect to all of them.

I should add that we have reviewed H.R. 1716 and H.R. 111, and we think that both of them comport with constitutional requirements on this point. Previous witnesses have already testified about the distinctions between the two proposals with respect to fiscal matters. Basically, Chairman Murphy's proposal would make the Panama Canal Commission an appropriated funds agency, whereas the Administration's proposal would treat the Commission as a government corporation whose fiscal activities would be regulated in accordance with the Government Corporation Control Act. With respect to the question of payments to Panama, both of these arrangements would satisfy constitutional requirements, because both would require the payments to be made pursuant to legislation, the one through the traditional process of "authorization" and "appropriation," and the other through the more streamlined procedure involving the submission and approval of an annual corporate budget. We defer to other agencies as to which of these forms is preferable.

Mr. Chairman, this includes my prepared remarks. If you or the Members of the Committee have questions, I will be pleased to try to answer them.

Mr. FOY. Perhaps the most interesting legal question that the committee asked us to review was the question of the constitutionality of Panamanian participation on the Panama Canal Commission. Now, that participation takes a number of forms. Basically, with respect to the Governing Board of the Commission, which will be composed of nine members, Panama has, under the treaty, a right to propose for appointment by the United States four members. Panama also has the right to remove those members.

In addition in the first instance, the Deputy Administrator of the Commission will be a Panamanian proposed by Panama for appointment to that position by the United States, and after the year 1990, the Administrator of the Commission will be a Panamanian proposed and appointed in the same way.

Now, the constitutional question basically is whether this participation by a foreign government in the management and control of the Panama Canal Commission is permitted by the provisions of the Constitution that govern the administration of executive functions. That question brings us into article II of the Constitution, and it involves more or less technical, mechanical questions regarding the constitutional rules governing the appointment and removal of officers of the United States.

Now, without engaging in an extended discussion of the rather intricate law of appointment and removal, I want to make three points which for me go to the heart of this constitutional question.

First, it would be alarming if the Constitution could be construed to permit the President and the Senate or the Congress, through legislation, to turn over the general administration of our Government to foreign nations. If a statute or if a treaty provided, for example, that the Attorney General would be someone proposed by a foreign nation, subject to removal by a foreign nation, there would be a fundamental constitutional problem with that arrangement. At the same time, we must recognize that from the very earliest days of the Republic, the President and the Senate, through the treaty power, as well as the Congress, through legislation, have authorized and supported arrangements between this country and other countries under which foreigners—people who are not working for us—are given a voice in affairs that affect our vital interests.

Today, for example, we have scores of organizations that are established or authorized under our treaties or our laws that give foreign officials a voice in vital affairs. We can start with the United Nations and proceed to the International Monetary Fund and other organizations. In 1958 we terminated an arrangement under which an international lighthouse was maintained through cooperation with foreign governments. In other words, there is a wide range of international organizations and treaty regimes that provide for cooperative relationships between this nation and others.

So the constitutional question regarding foreign participation in such arrangements is not answered simply by noting the presence of foreign participation. What you must do is look to the substance of the arrangement, the function of the organization, and determine whether that function is one in which, under the Constitution, foreigners may have a voice.

That brings me to the second point. The basic function of the Panama Canal Commission and the treaty regime, under the Panama Canal Treaty, is to transfer control of the Panama Canal to Panama.

Is this something that or Government is constitutionally entitled to do? The answer is clearly yes. Congress, with its undoubted powers under article 4 of the Constitution, as well as the President and the Senate under the treaty clause, can transfer control of the Panama Canal to Panama.

Thus the question before us is simply one of means—does this treaty use a constitutionally acceptable means of transferring that control.

And I think you can refine that question further. The basic issue is whether the Constitution permits us to transfer control by degrees, as contemplated in this treaty, or whether, on the other hand, it requires us to transfer control all at once.

As my statement indicates, the Department of Justice thinks that the answer to that question is this: The Constitution permits us to transfer control over the canal by degrees through the arrangement established under the treaty.

My last point is simply this. In applying the Constitution in the field of international affairs, the courts have long followed a rule of self-restraint; and I think that rule was perhaps best expressed recently by Mr. Justice Stevens in the case involving the right of Congress to legislate concerning foreigners who are living in the United States with respect to their entitlement to welfare payments. Mr. Justice Stevens said that in the field of foreign affairs, any rule "of constitutional law"—I am quoting here—"that would inhibit flexibility of the political branches of the Government to respond to changing world conditions should be adopted with the greatest caution."

In other words, the posture of the court is that in the field of international affairs, the Constitution was designed to leave the political branches—Congress and the executive—free to deal with foreign relations on a flexible basis.

We think that rule applies here, and we think that the arrangement established by the treaty for the composition of the Commission is constitutional for that reason.

The next question I would like to comment on is one that is not discussed in my prepared statement, but was part of my assignment for today. Basically it's the question of the effect of the approach taken in both H.R. 111 and H.R. 1716 with respect to the general amendment to the Panama Canal Code and the provisions of the United States Code that relate to the Panama Canal Zone.

I think there are two concerns here. The first concern is that the implementing legislation should maintain existing law in effect to the extent necessary to enable this country to exercise its powers and to discharge its obligations under the treaty, as provided in the treaty.

The second concern is basically one of legislative policy. Not only should the transfer of control to Panama be efficient in an operational sense; it should be legally efficient. In dealing with our own law and changing it to conform to the requirements of the treaty, we should attempt to fashion the implementing legislation in such a way as to minimize litigation, reduce the number of legal questions that will inevitably arise.

I wish the Office of Legal Counsel had some light to shed on this subject, but we can offer you only the most conventional wisdom.

The approach taken in both bills is basically this: both bills amend the existing law by substituting the Panama Canal Commission for the Panama Canal Company and government, amend the existing law by replacing the Panama Canal Zone, as it is referred to in existing law, with the areas and installations that are reserved for our use under the Panama Canal Treaty.

The theory is that that sort of amendment will maintain existing law in effect to the greatest extent possible consistent with the treaty and will permit us to reserve the larger question of permanent amendment. Undoubtedly, simply as a housekeeping matter, additional changes will have to be made to clean up the current Code, to take provisions out that are obsolescent, to modify provisions that no longer work as they are intended to work. The point is that those questions can be addressed after we have had some experience in operating under the new treaty regime. I think this is the philosophy of both bills, and it seems a reasonable one.

Now, that's all I have, Mr. Chairman. I would be happy to answer questions.

Mr. HUBBARD. Thank you, H. Miles Foy, of the Justice Department.

What are the consequences of your assertion that Panamanian board members of the Commission are not officers of the United States in the constitutional sense?

Mr. FOY. The constitutional consequence of that assertion is that the manner of their appointment and removal is not governed by article 2 of the Constitution which governs the appointment and removal of officers of the United States.

I should add, however, that the assertion that these board members are not officers of the United States in the constitutional sense does not mean that they are not bound by the treaty, that they are somehow free agents. Their legal status, in terms of the duties that they will perform on the Commission, is much the same as that of the American members. The constitutional point is simply that they will be persons acting on behalf of Panama not the United States.

Mr. HUBBARD. Many of the statutes provide that "officers of the United States" are those that make a significant contribution to policy decisions of an agency.

Would not the Panamanian board members fall under these statutes?

Mr. FOY. They would fall under that general statutory language.

Mr. HUBBARD. You state on page 4 of your statement that officers of the United States may not have to be citizens, but they do have to be persons who "owe allegiance" to the United States.

Did you know Dr. Wayne Bray recounts in his book, "The Common Law Zone in Panama", that the first chief justice of the supreme court of the Canal Zone was Dr. Facundo Mutis Durán, who was a Panamanian citizen who had been twice Governor of Panama and a justice of the Supreme Court of Panama while it was under Colombian rule.

Quote from page 85 of Dr. Bray's book, footnote 53:

The following exchange took place during the hearings before the Senate Committee on Inter-Oceanic Canals in 1906:

"Mr. McGOON. The chief justice is Mutis Durán.

"Senator MORGAN. Is he a citizen of the United States?

"Mr. McGoon. He is not.

"Senator MORGAN. How did it ever happen, Judge McGoon, that a man who is not a citizen of the United States became eligible to be the chief justice of the supreme court of any territory in this Union?

Mr. McGoon answered: "It was based on the precedent of Chief Justice Aribano of the Philippines. Three out of seven judges of the Philippine supreme court are not citizens of the United States. In Puerto Rico the same thing took place."

Then Senator Morgan said: "That precedent aside, do you know of any law of the United States which authorizes the employment of a foreigner, a non-citizen of the United States, as the chief justice of any judicial court anywhere in the Union?"

Mr. McGoon replied: "I do not know that it is especially provided for, but I do not think that there is anything which prohibits it."

Senate Document No. 401, 59th Congress, 2d Session, page 706.

Now, it may be that Dr. Duran's appointment was partially due to the fact that the Civil Code of Panama applied in the Canal Zone from 1904 up to the time of the creation of the Canal Zone in 1934.

Is it not also the case, in writing qualifications for creation of various officers, legislation has stipulated that the individual officer be a U.S. citizen, almost presuming that he may not be such unless so required?

Mr. Foy. I think that's correct, Mr. Chairman. In fact, the old common law rule always was that one of the fundamental qualifications for office under a sovereignty was, if not citizenship, then at least allegiance. And that is one of the reasons that these Panamanian members are not officers of the United States.

The point, I think, is that if you accept that proposition you reach the central question: Do they have to be? Does the Constitution require them to be? And the answer, we think, is no. The Constitution permits us to transfer control to Panamanians, and that is what in effect we are doing by establishing this Commission.

Mr. Hubbard. In the second issue which you discuss in your testimony, the effect of the treaty on income tax liability, you place great weight on the preratification history of the treaty. I want to place equal weight on the treaty history with respect to the issue of the constitutionality of the board of the Commission.

The issue which I raise again is whether your assertion that the Panamanian board members are not "officers of the United States" in the constitutional sense ought to restrict the legislative authority of the Congress. In 1977, in hearings before this subcommittee, the Department of State responded—quoting from page 14 of the printed hearings: "This authority"—meaning legislative authority—"would include legislating the means for establishing toll rates, the conduct of relations with our employees, budget and accounting practices, et cetera. The Commission"—and I emphasize—"and all its officers and employees will be fully subject to such legislation."

This statement would seem to lead us to the conclusion that provisions of the legislation can serve to affect the Panamanian board members.

Is this the case?

Mr. Foy. I am sorry, Mr. Chairman, I am not familiar enough with the context of the statement you just read to comment on the substance of it. If I take your meaning, I think the answer is that all of these board members are subject to the laws governing the Commission. The Panamanian members are subject to it just as the American members are. I should add that this treaty is also a law of Panama, so that the people who will be representing Panamanian interests will be acting under our law and under Panamanian law. In this instance these two bodies of law are the same thing, that is to say, the treaty. And the members of the Commission will be bound by it.

Mr. HUBBARD. OK, thank you. I would like to refer to your statement where, on page 9, you conclude that any income tax exclusion provision of the implementing agreements could not take effect as domestic law where it conflicts with statutes that now apply.

Am I correct that this would be the case with any provision of the implementing agreement?

Mr. FOY. With any provision of the implementing agreement?

Mr. HUBBARD. Yes.

Mr. FOY. I assume that that would be the case, but I can't give you a horseback opinion on that. I will discuss the question of the legal effect of the implementing agreements generally, if that would be responsive to your question.

Mr. HUBBARD. Is it correct that domestic law would prevail over implementing agreements?

Mr. FOY. I think as a general proposition that would be the case where there is an inconsistency between domestic statute and the implementing agreement.

Mr. HUBBARD. Two more questions. Would you explain to us something more about the prisoner exchange agreement between the United States and Panama?

Before you respond to that question, for the benefit of our committee members and the record of these hearings, I would like to ask unanimous consent that the executive agreement between the United States and Panama on prisoner exchange, as well as the executive agreements on cemetery removal and aviation facilities, be placed in the record at this point.

Is there any objection?

Hearing none, it is so ordered.

[The following was received for the record:]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA ON THE EXECUTION OF PENAL SENTENCES

Whereas: The United States of American and the Republic of Panama, agreeding on the necessity of mutual cooperation in combatting crime insofar as the effects of such crime extend beyond their borders and with the purpose of assuring the better administration of justice through adequate procedures that facilitate the social rehabilitation of prisoners,

Whereas: Paragraph 11 of Article IX, of the Panama Canal Treaty of September 7, 1977 (The Panama Canal Treaty), provides that "The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality",

Consequently, they have agreed to enter into a Treaty on the Execution of Penal Sentences in the following terms:

ARTICLE I

(1) Sentences imposed by a court of the Republic of Panama on nationals of the United States of America may be served in penal institutions of the United States of American or under the supervision of its authorities in accordance with the provisions of this Treaty.

(2) Sentences imposed by a court of the United States of American, or a state thereof, on nationals of the Republic of Panama may be served in penal institutions of the Republic of Panama or under the supervision of its authorities in accordance with the provisions of this Treaty.

ARTICLE II

For the purposes of this Treaty:

(1) "Transferring State" means the Party from which the offender is to be transferred.

(2) "Receiving State" means the Party to which the offender is to be transferred.

(3) "Offender" means a national of either Party who has been sentenced by the courts of the other Party.

(4) "Category I Offender" means a person who has been convicted and who is (a) a United States citizen employee or his dependent, or (b) a member of the United States Forces or his dependents, or (c) a member of the civilian component or his dependent. The terms "United States citizen employee," "dependent," "United States Forces," and "member of the civilian component" as used in this subparagraph have the meaning given to them in Article I of the Agreement in Implementation of Article III of the Panama Canal Treaty and Article I of the Agreement in Implementation of Article IV of the Panama Canal Treaty.

(5) "Category II Offender" means all other offenders who are nationals of either the United States of America or the Republic of Panama.

ARTICLE III

This Treaty shall apply only under the following conditions:

(1) That the offense for which the Offender was convicted and sentenced is one which would be punishable in the Receiving State; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both States be identical in those matters which do not affect the nature of the crime.

(2) That the Offender be a national of the Receiving State.

(3) That the Offender has not been sentenced to the death penalty nor convicted of a purely military offense.

(4) Except for Category I Offenders, that at least six months of the Offender's sentence remain to be served at the time of petition to transfer.

(5) That the sentence be final, i.e., that any appeal procedures have been completed, and that there be no collateral or extraordinary remedies pending at the time of invoking the provisions ot this Treaty.

(6) That the Offender's express consent, or the consent of a legal representative in the case of a minor, to transfer has been given voluntarily and with full knowledge of the legal consequences thereof. That before the transfer, the Transferring State shall afford an opportunity to the Receiving State to verify through an officer designated by the laws of the Receiving State that the Offender's consent to the transfer has been given voluntarily. The express consent of the Offender shall be required in all cases.

ARTICLE IV

The Parties will designate authorities to perform the functions provided in this Treaty.

ARTICLE V

(1) Each transfer of American Offenders shall be requested in writing by the Embassy of the United States of American in the Republic of Panama to the Ministry of Foreign Affairs. As to a Category I Offender, submission of such a petition shall depend solely on such Offender notifying the Embassy of the United States of American of his or her preliminary decision to elect to transfer under the Treaty.

(2) Each transfer of Panamanian Offenders shall be requested in writing by the Embassy of the Republic of Panama in the United States of American to the Department of State.

(3) As to Category II Offenders, if the Transferring State considers the request to transfer the Offender appropriate, the Transferring State will communicate its approval of such request to the Receiving State so that, once internal arragnements have been completed, the transfer of the Offender may be effected.

(4) As to eligible Category I Offenders, no finding of the appropriateness of such consenting Offenders' transfer by the Transferring State shall be required. Once internal arrangements have been completed, their transfers shall be effected.

(5) Delivery of an Offender by the authorities of the Transferring State to those of the Receiving State shall occur at a place agreed upon by both Parties. The Receiving State will be responsible for the custody and transport of the Offender from the Transferring State.

(6) In making decisions concerning the requests for or approval of the transfer of a Category II Offender under paragraphs 1–3 of this Article and with the objective that the transfer should contribute positively to his social rehabilitation, the authorities of each Party will consider, among other factors, the seriousness of the crime, previous criminal record, if any, health status and the ties that the Offender may have with society of the Transferring State and the Receiving State.

(7) In cases where a Panamanian national has been sentenced by a state of the United States of American, the approval of such an Offender's transfer pursuant to paragraph 3 of this Article shall be required from both the appropriate state authority and the federal authority.

(8) The Transferring State shall furnish to the Receiving State a certified copy of the sentence or judgment relating to the Offender. When the Receiving State considers such information insufficient, it may request, at its expense, copies of principal portions of the trial record or such additional information as it deems necessary. The Transferring State shall grant such request to the extent permissible under its laws.

(9) When the Transferring State does not approve, for whatever reason, the transfer of a Category II Offender, it shall communicate this decision to the Receiving State without delay.

(10) The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an Offender or the completion of his sentence.

ARTICLE VI

(1) An Offender delivered for execution of sentence under this Treaty may not again be detained, tried or sentenced in the Receiving State for the same offense for which the sentence was imposed by the Transferring State.

(2) Except as otherwise provided in this Treaty, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole or conditional release.

(3) Each Party may request reports indicating the status of confinement of all Offenders transferred under this Treaty, including in particular the parole or release of an Offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

ARTICLE VII

The Transferring State shall retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts. The Transferring State also shall retain the power to pardon or grant amnesty or clemency to an Offender. The Receiving State, upon being inforned of any decision in this regard, will put such measures into effect.

ARTICLE VIII

(1) This Treaty shall also be applicable to persons subject to supervision or other measures under the laws of one of the Parties relating to youthful Offenders. The Parties shall, in accordance with their laws, agree on the kind of treatment to be accorded such persons upon transfer. Consent for the transfer of such persons shall be obtained from a legally authorized representative.

(2) Nothing in this Treaty shall be interpreted to limit the ability which the Parties may have, independent of the present Treaty, to grant or accept the transfer of youthful or other Offenders.

ARTICLE IX

By arrangement between the Parties for specific cases, persons accused of a crime who have been duly determined by competent authorities of the Transferring State to be suffering from a mental aberration or mental illness, and for such reason are declared incompetent to stand trial, may be transferred to the country of which they are nationals so that they may be cared for in special institutions.

ARTICLE X

Notwithstanding any other provision of this Treaty, or any law of either Party, prior to the termination of the Transition Period established by Article XI of the Panama Canal Treaty, all offenders incarcerated in the areas and installations made available for the use of the United States of America by the Republic of Panama, who are not nationals of either country, shall be permitted, subject to the approval of both Parties, to elect to serve the remainder of their sentences in penal institutions of the Republic of Panama.

ARTICLE XI

If either Party enters into an agreement for the execution of penal sentences with any other State, the other Party shall cooperate in facilitating the transit through its territory of Offenders being transferred pursuant to such agreement. The Party intending to make such a transfer will give advance notice to the other Party of such transfer.

ARTICLE XII

In order to carry out the purposes of this Treaty, each Party shall take the necessary measures and shall establish adequate administrative procedures so that a sentence imposed by a Transferring State will have legal effect in the Receiving State.

ARTICLE XIII

(1) This Treaty shall be subject to ratification and shall enter into force on the date on which the instruments of ratification are exchanged. The exchange of instruments of ratification shall take place at Washington.

(2) This Treaty shall remain in force as follows:

(a) With respect to "Category I Offenders," until noon, Panama time, December 31, 1999; and

(b) With respect to "Category II Offenders," for a period of five years from the date of exchange of instruments of ratification of this Treaty, and shall be automatically renewed for additional periods of five years, unless one of the Parties notifies the other Party in writing of its intent to terminate it at least six months before the expiration of the inital five year period or of any extension thereof.

DONE in duplicate, in the English and Spanish languages, both texts being equally authentic, at Panama, this 11th day of January, 1979.

For the United States of America:

AMBLER H. MOSS, Jr.,
Ambassador Extraordinary
and Plenipotentiary.

For the Republic of Panama:

CARLOS ALFREDO LOPEZ-GUEVARA,
Ambassador Extraordinary
and Plenipotentiary.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA RELATIVE TO THE USE OF PLOTS OF LAND LOCATED IN THE REPUBLIC OF PANAMA FOR MAINTAINING A PERMANENT CEMETERY

The United States of America and the Republic of Panama, desiring to strengthen their ties of friendship, have agreed upon the following as regards the establishment of a cementery at Corozal:

ARTICLE I

1. Without prejudice to the provisions of the Agreement in Implementation of Article IV of the Panama Canal Treaty, signed in Washington September 7, 1977, the Republic of Panama grants to the United States of America the exclusive use of the areas identified and described in the maps which constitute Annexes A and B to this Agreement, hereinafter referred to as "the Areas".
2. The United States of America will use the Areas exclusively to maintain a cemetery.
3. The rights which the Republic of Panama hereby confers upon the United States of America are effective upon the date of entry into force of this Agreement and thereafter, and, moreover, are without taxation or the imposition of fees or costs.
4. The Republic of Panama likewise grants to the United States of America free access to the Areas for the use set forth in this Agreement.

ARTICLE II

1. The United States of America will use the Areas exclusively for the purposes of the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, during the life of that Agreement, and for the purpose set forth in Article I of this Agreement. In carrying out these purposes the United States of America may

bury United States citizens or their dependents, erect headstones and boundary walls, take such measures to beautify and maintain the Areas as it deems appropriate, build a commemorative monument and construct roads, buildings (including two residences) and the utilities needed to maintain this cemetery.

2. The flags of the United States of America and the Republic of Panama shall be displayed in the Areas in the manner prescribed by Article VII of the Panama Canal Treaty of 1977.

3. The Republic of Panama will provide the United States of America with uninhibited access to those utilities necessary for the operation and maintenance by the United States of America of the Areas. Upon request of the United States of America, the Republic of Panama will insure that there is made available to the United States of America those utilities necessary for the operation and maintenance by the United States of America of the Areas. The terms and conditions of use, prices, rates and tariffs, as well as priorities, shall not be unfavorable in relation to those applicable to the most favored private user.

4. The Republic of Panama will insure that the Areas remain free from private or public easements or other encumbrances that might hinder their use by the United States of America for the purposes of this Agreement.

5. The Republic of Panama will further the preservation of the dignity and esthetic character of the cemeterial site which shall be maintained in the Areas, prohibiting unsightly or inappropriate structures or activities in the vicinity of the Areas.

6. The United States of America will not allow any third party to use the Areas or any part of them. Moreover, it is agreed that should the Areas or any portion thereof cease to be used for the purposes set forth in Article I of this Agreement, the use of such land shall revert to the exclusive use of the Republic of Panama.

ARTICLE III

1. The United States of America may bury or exhume bodies of United States citizens and their dependents within the Areas, and may transport them to or from the Areas. For purposes of this Agreement, "United States citizens and their dependents" shall be comprised of the following categories of persons:

(a) Persons to whom the United States of America is authorized to provide medical services in accordance with the Panama Canal Treaty and related agreements;

(b) Members of the Armed Forces of the United States of America on active duty, to the extent authorized by applicable United States laws and regulations;

(c) Persons who, prior to the entry into force of this Agreement, have reserved plots in the Areas; and

(d) Persons having close relatives buried in the Areas.

2. It is understood that after noon, Panama time, December 31, 1999, interment of the remains of persons shall take place only with the mutual consent of the appropriate authorities of the United States of America and of the Republic of Panama. Both Parties shall give sympathetic consideration to requests for the interment of the remains of individuals when the remains of close relatives of such individuals are interred in the Areas.

3. The United States of America will take all necessary measures to prevent the operations authorized by this Article from endangering public health.

4. With respect to the movement through Panamanian territory of bodies to be buried in the Areas or removed from them, the United States of America shall not be subject to the laws, regulations or administrative authority of the Republic of Panama concerning movement of bodies.

5. All such burials, disinterments and movements of bodies shall be exempted from all Panamanian taxes.

ARTICLE IV

1. All expenses incurred in carrying out the provisions of Articles II and III shall be borne by the United States of America.

2. Nationals of the United States of America designated by the United States of America to carry out the purposes of this Agreement and their dependents, shall be treated as members of the civilian component and dependents in accordance with the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 for all purposes during the life of that Agreement. Thereafter, such nationals and their dependents shall be treated as members and dependents of members of the administrative and technical staff of the Embassy of the United States of America in the Republic of Panama.

3. All supplies, materials and equipment or other removable property utilized by the United States of America in carrying out the provisions of this Agreement, whether procured in Panama or imported, and the Areas, including all non-removable improvements thereon that have been made or shall be made, shall be exempt from all forms of taxation, direct or indirect. The United States of America shall have the same exemption in all undertakings and services which it may order or contract for, in carrying out the purposes of this Agreement. It is understood, however, that this exemption does not mean that the Republic of Panama is obliged to reimburse taxes collected by it prior to the purchase of goods or services on the Panamanian market by the American Battle Monuments Commission or its successor.

ARTICLE V

The terms, conditions and prerequisites for employment of Panamanian nationals by the United States of America under this Agreement shall conform with the general principles of the labor laws of the Republic of Panama.

ARTICLE VI

1. The United States of America hereby designates the American Battle Monuments Commission as the agency to carry out the terms of this Agreement and will inform the Republic of Panama of any successor agency.

2. The American Battle Monuments Commission or its successor shall be exempt from the jurisdiction of the Republic of Panama.

3. Any differences of interpretation which may arise with respect to this Agreement shall be resolved by the Parties through diplomatic channels.

ARTICLE VII

This Agreement shall enter into force on the same date that the Panama Canal Treaty of 1977 and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal enter into force, or on the date on which the Republic of Panama notifies the United States of America that its Constitutional requirements have been fulfilled, whichever is later.

Signed at Panama, Republic of Panama, this 11th day of January, 1979, in the English and Spanish languages, both texts being equally authentic.

For the United States of America:

AMBLER H. MOSS, JR.,
Ambassador Extraordinary
and Plenipotentiary.

For the Republic of Panama:

CARLOS ALFREDO LOPEZ-GUEVARA,
Ambassador Extraordinary
and Plenipotentiary.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA CONCERNING AIR TRAFFIC CONTROL AND RELATED SERVICES

The Governments of the United States of America and the Republic of Panama, in order to establish appropriate procedures to provide certain air traffic control and related services in those areas designated by the International Civil Aviation Organization (ICAO) and described in the ICAO Caribbean/South American Regional Air Navigation Plan, Document No. 8733, as the Panama Flight Information Region (FIR), and in order to conclude a definitive arrangement on this subject to supersede the Exchange of Notes of April 5 and 10, 1950, in accordance with the Exchange of Notes Relating to Air Traffic Control Service, dated September 7, 1977, have agreed to the following:

ARTICLE I.—DEFINITIONS

The terms listed below, as used in this Agreement, are defined as follows:

A. FAA—The Federal Aviation Administration, Department of Transportation, United States of America.

B. DAC—The Department of Civil Aviation, Government of the Republic of Panama.

C. ICAO—The International Civil Aviation Organization.

D. Panama FIR—The Panama Flight Information Region, a geographical area including the Isthmus of Panama and certain oceanic areas on either side of the Isthmus, the complete description of which is contained in the ICAO Caribbean/South American Regional Air Navigation Plan, Document No. 8733.

E. FAA Employees and Dependents—

1. Employees—Citizens of the United States of America to whom United States passports have been issued, who are employed by the FAA, and assigned to perform FAA functions and duties in Panama. This includes personnel on temporary duty and crew members of FAA aircraft who are in transit or visiting on official business.

2. Dependents—The spouses and children of FAA employees and other relatives who depend upon them for their subsistence and who habitually live with them under the same roof.

F. Designated Representatives—The representative designated by each Government pursuant to Article V of this Agreement.

ARTICLE II.—OBLIGATIONS OF THE UNITED STATES OF AMERICA

At the request of the Republic of Panama, the Government of the United States of America undertakes by this Agreement to provide, through the Federal Aviation Administration, the air traffic control, communications, systems maintenance, and related services defined herein for the Panama FIR until such time as Panama shall assume responsibility for the provision of such services in accordance with this Agreement, and undertakes also to provide to the Republic of Panama such assistance as may be mutually agreed to faciliatate the development of the capability of the Republic of Panama to reassume the various responsibilities.

ARTICLE III.—OBLIGATIONS OF THE REPUBLIC OF PANAMA

The Government of the Republic of Panama, in conformity with its acceptance of responsibility for providing aviation services within the Panama FIR and the corresponding obligation to provide a coordinated system of air traffic control and related services as fully described in the ICAO Regional Air Navigation Plan, grants to the FAA, for the duration of this Agreement, the rights herein described until it develops the capabilities required for it to assume full responsibility for the services described in Article IV.

ARTICLE IV.—SERVICES TO BE PROVIDED

A. The United States agrees to provide temporarily the air traffic control, communications, systems maintenance, and related services set forth below until the responsibility for providing such service is reassumed by the Republic of Panama in accordance with the following schedule:

1. Within two years of the effective date of this Agreement, the Republic of Panama shall assume all operational and associated maintenance functions of the International Flight Service Station (IFSS), including maintenance of air-to-ground communications equipment associated with the operation of IFSS.

2. Within four years of the effective date of this Agreement, the Republic of Panama shall assume all operational and maintenance functions of the Center and Terminal Radar Approach Control (CERAP), except maintenance of the associated radar equipment.

3. Within five years of the effective date of this Agreement, the Republic of Panama shall assume all maintenance functions associated with the radar equipment serving the CERAP and all other operational and/or maintenance functions not previously accounted for.

4. The time periods established herein can be reduced by agreement between the FAA and the DAC.

B. To accomplish the provisions of paragraph A of this Article, it is further agreed that with 30 days of entry into force of this Agreement, the designated representatives shall jointly develop a detailed Transition Plan consistent with this Agreement.

C. It is also agreed that with 90 days of entry into force of this Agreement, the designated representatives shall develop and submit to their respective Governments appropriate changes to propose for inclusion in the ICAO Regional Air Navigation Plan, Document No. 8733. These shall include specific recommended changes to the existing aeronautical fixed circuits and routing guide which reflect the diminishing role of the United States.

D. The Parties agree to establish a system whereby the FAA may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the FAA, for a limited period of time, to assist in the operation or the maintenance function of activities reassumed by the Republic of Panama pursuant to this Article. The salaries and related costs of providing such persons to furnish this assistance shall be reimbursed to the United States by the Republic of Panama.

E. The FAA shall assist the DAC in establishing the capability required for the Republic of Panama to assume the responsibility of providing the services identified in paragraph A of this Article. To this end, the FAA shall, to the extent possible, provide, partially on a cost reimbursable basis, training programs for the development of DAC personnel skills. To the maximum extent feasible, the FAA shall provide training in Panama. It is agreed that emphasis shall be placed on training and development of DAC specialists rather than employing Panamanian citizens as FAA employees, and that FAA personnel shall be replaced with qualified DAC personnel as the latter become available. The FAA and DAC shall agree in the transition plan on the distribution between them of the costs involved in training the Panamanian personnel.

F. The Parties agree that, due to its specialized technical capabilities, the FAA may, if deemed desirable by both Parties, provide ancillary aeronautical services.

ARTICLE V.—DESIGNATED REPRESENTATIVES

Each Party shall designate a representative to facilitate implementation of this Agreement. The designated representative of the United States of America shall be an employee of the FAA, and the designated representative of the Republic of Panama shall be an employee of the DAC. Each Party shall communicate to the other the name of its designated representative.

ARTICLE VI.—USE OF AREAS AND FACILITIES

A. The Republic of Panama grants the FAA the right to use the operational and housing areas listed in paragraph B of this Article to provide the services described in Article IV and for the housing of personnel, subject to the following terms and conditions, except as otherwise provided in paragraph B of this Article:

1. The areas listed herein shall periodically be reviewed and revised to reflect and required changes acceptable to the Parties.

2. The FAA may at any time modify installations located within FAA operational or housing areas to insure the continuation of adequate operational facilities and housing to fulfill the purpose of this Agreement. However, the FAA will make no changes in installations which affect the airway structure within Panama without advance consultations between the FAA and the DAC.

3. The FAA may at any time dispose of in the Republic of Panama under conditions agreed upon by the two Parties, or remove from the Republic of Panama, all equipment, installations, material, supplies or other removable property of the United States Government brought into, acquired or constructed in the Republic of Panama by or for the FAA. Disposition of such property shall be in accordance with applicable United States law. The Government of the United States will not remove from the Republic of Panama any such equipment, installations, material, supplies or other property the removal of which would affect the quality of service the Republic of Panama will be able to provide. Property left by the FAA in operational areas 60 days after the date that this Agreement terminates shall, unless otherwise agreed by the two Parties, become the property of the Republic of Panama.

4. The Republic of Panama agrees to provide police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection to FAA personnel and their dependents and to FAA operating and housing areas. FAA shall have responsibility for control of access to its operational areas. To control those operational areas and to afford added personal security in its housing areas, the FAA shall have the right to hire guard personnel. The designated representatives may agree on such regulations relating to control of access as are consistent with the purposes of this Agreement.

5. The Republic of Panama agrees to provide without charge those sites the FAA and the DAC deem necessary for air navigation aids or other air traffic control and communications equipment.

6. In connection with FAA use of operational or housing areas or otherwise, the Republic of Panama authorizes the FAA to establish and use communications networks and radio electronic installations, together with their associated radio and navigational aid frequencies, to carry out the provisions of Article IV of this Agreement.

B. 1. The following housing and operations areas are subject to this Agreement:

(a) CERAP building and grounds (FAA Headquarters Building No. 0611), located on Albrook Field. The FAA is authorized to continue to provide space to the Federal Highway Administration, United States Department of Transportation, in the CERAP Building for the duration of this Agreement.

(b) Ancon Hill communications facility, identified in the area subject to separate bilateral agreement in Attachment 5 to Annex "A" to the "Agreement in Implementation of Article IV of the Panama Canal Treaty."

(c) Perico Island radar facility, identified as an area subject to separate bilateral agreement in Attachment 1 to Annex "A" to the "Agreement in Implementation of Article III of the Panama Canal Treaty."

(d) France Field navigation facility (VOR and TACAN).

(e) The part of Cardenas Village, identified as the area subject to separate bilateral agreement in Attachment 26 to Annex "A" to the "Agreement in Implementation of Article III of the Panama Canal Treaty." These housing units shall be available for the use of the FAA in housing its employees and employees of the Federal Highway Administration of the Department of Transportation for as long as necessary during the term of this Agreement. At such time as the FAA no longer requires certain housing units in the area, the excess units may be made available to the Panama Canal Commission for housing United States citizen employees of the Commission under the regime established in Article VI of the same Agreement.

2. The Republic of Panama grants to the FAA for the duration of this Agreement the continued right of use of the Taboga Island air navigation facility, grounds, and support facilities currently operated in the Republic of Panama.

ARTICLE VII.—SERVICES AND INSTALLATIONS

A. The Republic of Panama agrees that the FAA, its employees and contractors and their dependents, may be authorized by the United States Forces and/or by the Panama Canal Commission to use for the purposes of this Agreement property, installations, housing facilities and services established or located in the Republic of Panama pursuant to the "Agreement in Implementation of Article III of the Republic of Panama Treaty" and the "Agreement in Implementation of Article IV of the Republic of Panama Treaty" as may be agreed between the FAA and the United States Forces and/or the Panama Canal Commission.

B. The Republic of Panama authorizes the FAA to continue to use accessory facilities such as pipelines, communications, sanitation services and utilities which seve the FAA operational or housing areas and are installed outside such areas. The two Parties shall agree, through their designated representatives, upon procedures to govern appropriate use, access, maintenance and repair of such accessory facilities.

C. The FAA and its employees and their dependents may use the public services such as sewerage, water, telephone, electricity, and public installations belonging to or regulated by the Republic of Panama subject to terms and conditions of use not less favorable than those accorded the most favored customer on a commercial basis.

D. The Republic of Panama agrees to insure the maintenance and repair of routes of access to FAA operational and housing areas or installations, in all cases where responsibility for such maintenance is not that of the United States Forces or the Panama Canal Commission. The Republic of Panama agrees that the FAA may use contractors or obtain such services as are available from the United States Forces or the Panama Canal Commission, as necessary, to assure continuous access to FAA operational and housing areas.

ARTICLE VIII.—CONTRACTORS AND CONTRACTORS' PERSONNEL

The two Parties agree to the provisions regarding contractors and contractors' personnel set forth in Annex A to this Agreement.

ARTICLE IX.—CLAIMS

The two Parties agree to the provisions regarding the disposition of claims set forth in Annex B to this Agreement.

ARTICLE X.—PRIVILEGES AND IMMUNITIES

A. Regarding entry and departure of FAA personnel from the territory of the Republic of Panama, exercise of criminal jurisdiction, taxation, including customs and import duties and customs inspection, licensing, registration and movement of official and personal motor vehicles, and the general legal status under the laws of the Republic of Panama of the FAA, its employees and their dependents, the Republic of Panama shall accord to FAA and to its employees and their dependents the same status as that accorded to the Embassy of the United States and to staff personnel of the Embassy and its operations, except as otherwise provided in this Agreement. The FAA shall conform to such practices as have been established by the Embassy and apply to the Embassy and other agencies of the United States

Government affiliated or related to it which are located or operate in the Republic of Panama, except insofar as explicitly otherwise provided by this Agreement.

B. Vessels and aircraft operated by or for the FAA, when in the performance of official duties, may move freely through Panamanian airspace and waters, without the obligation or payment of taxes, tolls, landing or pier charges, or other charges by the Republic of Panama, and without any other impediment. Such vessels and aircraft shall be exempt from customs inspection or other inspections. When the same carry freight, crews or passengers who are not entitled to the exemptions provided for in this Agreement, prior notice shall be given to the appropriate Panamanian authorities. Both Parties shall adopt procedures to insure that the laws and regulations of the Republic of Panama are not violated.

C. In exceptional cases as required for the proper performance of services provided by the FAA, FAA employees may enter and depart the territory of the Republic of Panama upon presentation of personal identification and a duly completed Panamanian entry or exit card. FAA employees and dependents assigned for full tours of service in the Republic of Panama, however, shall conform to the practices regarding possession of passports and issuance of Panamanian visas established for staff personnel of the Embassy of the United States and of other United States Government agencies affiliated with it operating in the Republic of Panama.

D. FAA employees and their dependents shall be exempted from any fiscal charges relating to their entry, stay in, or departure from the Republic of Panama. Airport fees paid by departing passengers using airports in the Republic of Panama shall be paid by FAA personnel on a non-discriminatory basis.

ARTICLE XI.—GENERAL PROVISIONS

A. Activities and operations of the FAA in the Republic of Panama shall be carried out with adequate attention to public health and safety in Panama. Within the FAA operational and housing areas made available to the FAA by this Agreement, the FAA shall adopt all appropriate measures to cooperate for these purposes with the authorities of the Republic of Panama.

B. The FAA, its employees and their dependents and designated contractors of the FAA shall respect the laws of the Republic of Panama and shall refrain from any activity inconsistent with this Agreement. They shall abstain from all political activity in the Republic of Panama. They shall not become involved in the internal affairs of the Republic of Panama. FAA employees and designated contractors may carry out coordination with officials of the DAC and of other agencies of the Government of the Republic of Panama as necessary under this Agreement.

ARTICLE XII.—ENTRY INTO FORCE AND TERMINATION

A. This Agreement shall enter into force on the same date that the Panama Canal Treaty of 1977 and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal enter into force, or on the date on which the Republic of Panama notifies the United States of America that its constitutional processes have been fulfilled, whichever is later. It shall terminate five years thereafter.

B. Before termination of this Agreement, if further assistance is deemed desirable and feasible, the two Parties shall consider the establishment of a Civil Aviation Assistance Group to provide such further assistance.

DONE in duplicate, in the English and Spanish languages, both equally authentic, at Panama, this eighth day of January, 1979.

For the United States of America:
LANGHORNE M. BONE.

For the Republic of Panama: ——— ———.

ANNEX A.—CONTRACTORS AND CONTRACTORS' PERSONNEL

A. Whenever contracts are awarded by the FAA to persons who are nationals or permanent residents of the United States or to corporations or other legal entities organized under the laws of the United States and under the effective control of such persons, such contractors shall be so designated by the FAA, and such designations shall be communicated to the authorities of the Republic of Panama through the designated representatives. Such contractors shall be subject to the laws and regulations of the Republic of Panama except as provided by this Agreement, including the following:

1. The contractor must engage exclusively in activities related to the execution of the work for which he has been contracted by the FAA, or related to other works or activities authorized by the Republic of Panama.

2. The contractor must refrain from any practice which may violate the laws of the Republic of Panama.

3. The Contractor shall enter and depart from the territory of the Republic of Panama in accordance with the procedures prescribed herein for FAA employees.

4. The contractor must obtain a certificate of professional identity which the proper authorities of the United States shall issue when they are satisfied he is duly qualified. This certificate shall be sufficient to permit him to operate under the laws of the Republic of Panama as a contractor of the FAA. The authorities of the Republic of Panama may require the registration of the appropriate documents to establish a juridical presence in the Republic of Panama and the designation of a person resident in the Republic of Panama as his legal representative.

5. The contractor shall not be obligated to pay any tax or other assessments to the Republic of Panama on income derived under a contract with the FAA so long as he is taxed in the United States at a rate substantially equivalent to the corresponding taxes and assessments of the Republic of Panama.

6. The contractor may move freely within the Republic of Panama, and shall have exemptions from customs duties and other charges as provided for FAA employees in this Agreement. These exemptions shall apply only to cases involving the importation of articles exempted at the time of entry and shall not be construed as obligating the Republic of Panama to reimburse customs duties and domestic taxes collected by the Republic of Panama in connection with purchases of goods from Panamanian sources subsequent to their importation.

7. The contractor may use public services and installations in accordance with the terms and conditions established for their use by the FAA in this Agreement, but shall pay non-discriminatory highway tolls and taxes for registration plates for private vehicles.

8. The contractor shall be exempt from any taxes imposed on depreciable assets belonging to him, other than real estate, which are used exclusively for the execution of contracts with the FAA.

9. The Republic of Panama will interpose no objection to the contractor's use of services and facilities of the United States Forces available for use by the FAA in accordance with this Agreement, to the extent that such use is authorized by the United States Forces.

B. The FAA shall withdraw the designation of a contractor when any of the following circumstances occur:

1. Upon completion or termination of the contract with the FAA.

2. Upon proof that such contractors are engaged in business activities in the Republic of Panama other than those pertaining to the FAA without authorization of the Republic of Panama.

3. Upon proof that such contractors are engaged in practices which in the view of the Republic of Panama constitute serious violations of the applicable laws of the Republic of Panama.

C. The authorities of the United States shall notify the authorities of the Republic of Panama whenever the designation of a contractor has been withdrawn. If, within 60 days after notification of the withdrawal of the designation of a contractor who entered Panama in the capacity of a contractor, the authorities of the Republic of Panama require such contractor to leave Panamanian territory, the United States Government shall insure that the Republic of Panama shall not incur any expense due to the cost of transportation.

D. The provisions of this Annex shall similarly apply to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security system.

ANNEX B.—CLAIMS

A. Each Party waives its claims against the other for damage to any property owned by it and used for the purpose of carrying out this Agreement, in the following circumstances:

1. If the damage was caused by an FAA employee or a DAC employee in the performance of his official duties; or

2. If the damage arose from the use of any vehicle, vessel, or aircraft owned by either Party and used by the FAA or the DAC, provided that the vehicle, vessel, or aircraft causing the damage was being used for official purposes, or that the damage was caused to property being so used.

B. In case of damage caused or arising as stated in paragraph A, to other property owned by either Party and located in the Republic of Panama, the claims shall be settled in due course, and if the claim is not settled, it may be pursued through diplomatic channels. Both Parties hereby waive the collection of any claims for an amount less than B/.1,400 or U.S. $2,400, whichever may be the currency of greater value.

C. Each Party waives its claims against the other Party for injury or death suffered by FAA employees or DAC employees while such employee was engaged in the performance of his official duties.

D. The authorities of both Parties shall cooperate in the investigation and procurement of evidence for a fair disposition of claims under this Annex.

E. Contractual claims against the FAA shall be settled in accordance with the dispute clause of the contracts, and in the absence of such clause, through presentation of claims to the United States authorities through the appropriate channels.

F. The United States Government shall require contractors and subcontractors referred to in Article VII of this Agreement to obtain appropriate insurance to cover the civil liabilities that may be incurred in Panamanian territory as a result of acts or omissions done in the performance of official duty by their employees. The designated representatives shall establish the general standards for such insurance, which shall include the provision that such insurance must be issued by companies which are established in the Republic of Panama or that have a legal representative residing therein.

Again, the question: would you explain to us something more about the prisoner exchange between the United States and Panama.

Mr. FOY. Mr. Chairman, I think that the first point to keep in mind with respect to the prisoner exchange agreement is that in effect it provides that U.S.-citizen employees and military personnel, and their dependents, who are tried in Panamanian courts and convicted, and whose sentence becomes final, will have a right to transfer to American prisons to serve out their sentences. That is a significant departure from traditional prisoner exchange agreements, because usually prisoner exchange agreements provide for three-way consent: the prisoner must want the transfer; the transferring state must approve the transfer; and the receiving state must be willing to receive him.

This prisoner exchange agreement, with respect to these people, that is to say, U.S.-citizen employees, military personnel, and their dependents, will give them a right to transfer to U.S. prisons if they are subject to Panamanian custody under final Panamanian sentence.

In addition, I should say that that provision remains in effect for the duration of the treaty regime, that is to say, until the year 2000.

Mr. HUBBARD. Last, the immigration provisions of the implementing legislation are not under the jurisdiction of this subcommittee. However, I believe the record should reflect some discussion of this issue, since it may be an important matter when implementation is debated on the House floor.

The Governor has given the subcommittee some background on this matter.

Do you have any waivers on conditions of inadmissibility, as contained in section 410 of H. R. 1716 or section 1611 of House bill 111?

That's a difficult question. I empathize with you as you grasp for the answer on that one.

Mr. FOY. Mr. Chairman, one of the differences between the present administration bill and House bill 111 is that the present Administration bill imposes a limit on the waiver of the public charge requirements that is otherwise available to these individuals who are entitled to special immigrant status.

Basically the limitation is that an individual otherwise entitled to special immigrant status must apply for immigration within the 30-month transition period, if this waiver provision is to come into effect.

Mr. HUBBARD. Thank you very much. Congressman Bauman?

Mr. BAUMAN. Mr. Foy, during the hearings that we held in Panama we heard a great deal of discussion from the former president of the Panama Canal Zone Bar Association, who was accompanied by a number of officials of that association, about the legal problems that members of that bar foresee in the transition period and afterward. We were told at that time that the bar association had not been contacted by anyone to discuss anything with them, and therefore they felt at a total disadvantage as far as resolving the questions that have arisen.

Now, I think you will have to admit that article 9 of the treaty, which provides for the transition laws and law enforcement, is a rather sketchy description of precisely how the rights of Panamanians, Zonians and American citizens are to be protected.

I was told after the testimony of the bar association by Mr. Terry Fortune of the State Department that indeed there had been negotiations, that there had been discussions between Panama and the United States as to the enforcement of that article, and that the Justice Department had twice rejected the interpretations or the outline.

Now, what is the status and, with 8 months left before this treaty takes effect, what are you doing to enforce this section that is so important to the operation of the treaty? And if you can't answer today, I'd like to have it within a week in writing.

Mr. FOY. I don't understand your question. What is it that we aren't enforcing?

Mr. BAUMAN. Well, if you don't understand the question, let me restate it emphatically.

Article 9 of the treaty clearly has many ambiguities as to the legal rights of U.S. citizens, Panamanians, and those who live in the shrunken area of the zone. It is left for agreement between the United States and Panama to set up some regime that will govern that. The Panama Canal Bar Association president testified that they didn't know what was going to happen, and had no contact from U.S. officials as to any of the many questions that they had. We have been guaranteed a statement from the association in the zone regarding these problems, but have not received it yet. We heard at least half an hour of testimony on this from their former president.

What is the Justice Department doing to bring about a resolution of the questions that are raised by article 9, and is there any agreement on which work is being done?

Do you understand that question?

Mr. FOY. Yes; I do.

Mr. BAUMAN. Thank you, sir. Well, respond to it, please.

Mr. FOY. I will respond to it in writing, Congressman Bauman.

Mr. BAUMAN. Do you know of anything that is being done to negotiate between the two sides on this?

Mr. Foy. Congressman, I do not know what questions you are talking about. I know that the Panama Canal Bar Association had some questions about the right of lawyers practicing in the zone to continue to practice. We answered those questions in a letter months ago.

Mr. Bauman. It had very little to do with their right to practice law. It was clear under the treaty that they would lose their right to practice law in the shrunken area of the zone, meaning that 50 percent or more that goes over on October 1.

Their questions were about service of papers, jurisdiction over individuals, what would happen to corporations, and the civil suits that are left hanging at the end of the 30 months. They had a whole host of questions—30 minutes worth of questions—and no answers and no indication that anybody was doing anything about it. These are the legal rights of the people involved, and we have no answer yet, before this committee and on the record, as to how they are going to be protected.

Mr. Foy. Well, with respect to the first point you raised, the question of service of papers, the law will remain in effect to permit the courts to continue with the civil cases that are now pending, the law will remain in effect to permit the courts to dispose of pending criminal cases and new criminal cases involving individuals who are associated with the U.S. presence, that is, U.S.-citizen employees and their dependents.

With respect to the problem of cases still pending at the end of the transition period, the treaty provides that those cases, if there are any, will be handled in the courts with an agreement between this country and Panama.

Mr. Bauman. Well, that's the problem, as I see it: We are talking about an agreement between the United States and Panama to enforce article 9, and the counsel points out article 11, as it applies. But, there are a number of legal questions which have to be answered well in advance of October 1 to protect the rights of the people who live in the zone.

I will give you an example of why I am raising this question. We were told by the head of the Panama Canal Authority, Ambassador Gabriel Lewis Galindo, in a 2-hour meeting on Saturday afternoon that the Panamanians have an absolute right to impose retroactive tax collection jurisdiction on some 140 corporations within the Canal Zone, and that they expect to do so. In one case, a $2 million judgment has already been rendered by the Republic of Panama Supreme Court against the privately owned, Canal Zone incorporated bus system. If it is in fact executed, the bus system will collapse and disappear and there will be no transportation.

These are serious questions, and you are telling me that this is waiting for an agreement at some point in the future between the United States and Panama.

When is it going to be made and when are we going to know the answers to these questions?

Mr. Foy. Mr. Bauman, with respect to that question of retroactive taxation, as far as I know the Justice Department didn't even know the question existed until a newspaper article appeared in the paper yesterday. I don't know if the State Department has been reviewing that question or if they knew about it. But we simply have not been asked to consider that question. Our role in the implementation of these treaties has been that of a legal adviser, and when you are a legal adviser you have to wait for your client to come to you.

I will be happy to provide you with information about the applicable law on the retroactive taxation of American businesses in the Canal Zone.

Mr. BAUMAN. Well, consider that a request made. If you didn't know about it, I can understand that, because you obviously have to be asked by the State Department.

But this question of tax claims against Zonians has been pending for years, even to the point wherein I just referred where the Supreme Court of Panama has rendered a judgment in one case. But on October 1, Panamanian officials told us, they are going to enforce it. For all I know, they are going to take the buses and then stop the bus line and then sell the buses off.

Now, if somebody can't get us answers to these questions, we are going to have to write into this implementing legislation a description of the rights of corporations that will remain after the enactment of this law. If you can give us an answer, maybe we won't have to do that.

But you see the dilemma in which we are placed.

Mr. FOY. I do. I will be happy to provide you with information on that point, Congressman.

Mr. BAUMAN. Well, the question, then, is: Is there any retroactive application of any Panamanian laws of any nature on October 1 to the citizens or corporations in the Canal Zone as now constituted?

Now, let me pass to my second question, and that has to do with the appointment powers that you have described. Now, you, rather cavalierly, in my humble judgment as a country lawyer from Maryland, have passed off the opinion that Panamanians can in fact be officers of the United States. And I have deep concern about the extent that that brings them under our constitutional and statutory authority.

I say this because the history of the Government of Panama has been one of rather extensive corruption in economic dealings between officials of the Government and various corporations and businesses. As you may know, Mr. Torrijos' brothers have all at one time or another been active in things such as the gambling casinos and drug dealing. One of them was arrested in New York for carrying drugs. There are imputations being made now that when the treaty goes into effect the bunkering facilities for oil and the ports are going to go into the hands of Panamanian officials or businessmen, so they can reap great profits.

Now, that is what we are hearing while we are down there—not, admittedly, on the record, but when we talk to Panamanians as well as Americans.

My question, then, is this: Do these four Panamanians whom the President must appoint upon their nomination for appointment come under our conflict-of-interest statutes, do they come under our laws so far as double dealing or self-dealing? How could we attack them if in fact they do engage in this kind of activity?

Under the decision in Buckley which you recommend, and which I quote to you, the Court concluded:

> That no change was made in the concept or the term "officers of the United States," first appeared in article 10, had been taken by all concerned to embrace all appointed officials exercising responsibility under the public laws of the nation.

They didn't talk about any exceptions for allegiance. As far as I can tell, that is something that you folks just invented to cover up the terms of the treaty after the fact. I mean, what's your authority, where are your cases to support an exception based on nonallegiance to the United States from the governing of our laws over an appointed official of the United States?

Mr. FOY. Congressman, I cannot cite you a case in point.

Mr. BAUMAN. I didn't think you could, that's why I asked you.

Mr. FOY. There are not any.

Mr. BAUMAN. There are not any. So, in other words, it's your opinion against the Supreme Court's opinion.

Mr. FOY. No; that is not the case. The Buckley case involved a question of separation of powers; it went to the heart of article 2. The question was whether Congress could give executive or quasi-judicial functions to an officer who was not appointed in accordance with article 2 of the Constitution, that is to say, not by the President with the advice and consent of the Senate, not by the President alone, not by the courts of law, and not by the heads of departments. And the Court said no, you can't do that; article 2 means what it says; these people are officers of the United States and they must be appointed in accordance with article 2.

Mr. BAUMAN. But in talking about the manner of appointment, the Court clearly discussed the entire concept of the duties of officials who are appointed officials of the United States—and they went back and referred to the Germain case, a 100-year-old case. I quote to you:

> All persons who can be said to hold an office under the government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment, there can be little doubt.

And then they go on to describe the test as "exercising responsibility." That was a direct quote from the Germain case that the Buckley case quoted with approbation.

The Canal Commission is a U.S. agency, and it is going to exercise responsibility—but four of its members are Panamanian citizens.

Mr. FOY. That's correct. A minority of the members of the Commission are Panamanians, and they will be representing Panama on the Commission.

I should say that in this respect the Panama Canal Commission is not different from a large number of bilateral and multilateral organizations that this country participates in.

Mr. BAUMAN. Well, then, why wasn't this established as a bilateral, binational agreement under the treaty rather than subjecting it to the laws of the United States under article 3 of the treaty? Clearly the Commission cannot exist without our implementing legislation.

Mr. Foy. Every bilateral organization established under a treaty exists pursuant to the laws of the United States, because a treaty is a law of the United States.

Mr. Bauman. You are talking about every bilateral commission created by treaty. You had the chance to do that in the treaty, but you referred instead to the Congress the matter of establishing this Commission under U.S. statutory law. Now we are sitting here trying to bail you out of another one of the loopholes that you wrote into this treaty. We keep finding out day after day things that were left for the future, and we get stuck with the political problems of implementing a treaty that nobody wanted in the United States except the State Department and two-thirds of the other body.

Now, I am asking you the question: Do we have the power in this implementing legislation to bring the Panamanian members under conflict-of-interest laws, under all the other laws that apply to any appointed official of the United States? Do we or do we not, in your view?

Mr. Foy. I can't give you an opinion on that. I will have to add that to my list.

Mr. Bauman. I don't know why you bothered to come up, if you couldn't answer a question like that. And I hope you will give us an answer. It seems to me that these are elemental questions that we are raising here, questions that ought to have been answered, not by you, particularly, but by this administration months and years ago. This thing has been on the boards for better than a decade, and this treaty has been kicking around for 1½ years. And we still don't know what it means this morning, on February 28, 1979, and I doubt if we will know at the end of the century what it will mean, because we will be fighting about it with the Panamanians, and you won't have avoided any of the conflicts that the administration was supposedly going to resolve by passing this treaty.

I want to ask one last question, if I may, Mr. Chairman.

Do I get from your statement that you do consider the Deputy Administrator, and eventually in 1990 the Panamanian who will be the Administrator, as a creature of the Congress of the United States as far as the laws applying to their activity?

Mr. Foy. He is a hybrid. That is because he is proposed by Panama but he is subject completely to our power of removal.

Mr. Bauman. In that capacity to whose law does he owe allegiance in carrying out his duties?

Mr. Foy. I think, as far as that goes, he stands on basically the same footing as the members of the Commission, that is to say, he is bound to discharge the obligations of the Commission under the treaty; he is answerable to the Commission; he must carry out its directives—he is subject to our law in that sense. And we can remove him.

Mr. Bauman. Well, as I recall, when we had the Department of State before us in 1977, they specifically stated that the Commission, and I quote, "and all of its officers and employees would be subject to U.S. legislation."

Is that accurate or inaccurate?

Mr. Foy. That's correct.

Mr. **Bauman**. Well, then, the Panamanian Deputy Administrator, who is rumored to be Fernando Manfredo, who has given us some of these interesting opinions, would be subject to U.S. law's interpretation of what his duties are, not to the Panamanian government's law. Is that correct?

Mr. **Foy**. Yes; I think that is correct. I think the more accurate thing to say would be he is going to be subject to the authority of the Commission; he works for the Commission.

Mr. **Bauman**. He's, in fact, an employee.

Mr. **Foy**. He's in fact an employee. So whatever the Commission tells him to do, he is dutybound to do it. And if he doesn't, we can remove him.

Mr. **Bauman**. No, not what the Commission tells him to do. What if we write a statute that tells him what to do? Is the Panamanian national in that job subject to the laws of the United States in that instance?

Mr. **Foy**. I suppose it would depend on what the statute said.

Mr. **Bauman**. You mean he can defy American law at will?

Mr. **Foy**. Well, let me give you an illustration. If we wrote a statute that said the Deputy Administrator of the Panama Canal Commission would have to sell his house, I don't think he would be subject to it, because we don't have that sort of jurisdiction over the Panama Canal Commission. We had that sort of jurisdiction under the old treaties, because we had essentially all the powers that a sovereign would have in the Zone. But we are giving those powers up. Panama will now exercise those powers.

Mr. **Bauman**. What if we pass a statute that says the Deputy Administrator, in his role in computing the tolls for the purposes of payments under article 13, will not include any projected profits for the contingency $10 million payment in that section?

Is that a mandate he would have to follow?

Mr. **Foy**. I think it would be if it were consistent with the treaty. As I recall the treaty, the treaty provides that the Commission will compute the toll and set the toll.

So probably the answer would be that the statute would be bad because it is not consistent with the treaty. The Commission is supposed to set the tolls.

Mr. **Bauman**. Well, it is, but ultimately the United States, or the President of the United States, has the right to approve tolls. And what faces this committee is the writing of the toll section in a manner that would in fact clarify some of the questions raised by the testimony we heard in Panama. Panamanian officials claim a full right to $75–85 million where we don't think they have that right.

Well, I guess I have probably raised more questions than I have gotten answers in the context of our discussion here, but I would hope that you could address them for the sake of the people who live in the Canal Zone, who have so many questions in their minds about their future—not just their pensions and their employment and their pay and whether their houses are about to disappear or their rents to triple—but their legal rights. We heard testimony down there from police officials, heads of the police union, that some police officers may have to leave when the Canal Zone shrinks to a smaller size on October 1 because they have been threatened indirectly with arrest for past activities, activities which under our law are legal.

If on October 1 we are going to have a wholesale imposition of Panamanian law and Panamanian interpretations of the treaty in the Canal Zone that goes to them, this is not just going to be diplomatic chaos. You are going to have international incidents that are going to make some of the flag burnings down there in the last 20 years look like peanuts, if I may use that phrase given the present Administration.

So please give us some answer as to what these legal rights are under the articles of this treaty—please. Thank you.

Mr. HUBBARD. Congressman Dornan, California.

Mr. DORNAN. Mr. Chairman, I have had most of my questions already answered this morning—and I know Mr. Foy is trying to do his best as only a representative of the administration.

I would just like to take a portion of my time to make an observation. My colleagues, and myself, are always complimenting one another at the end of sessions, but I would like to do it at the beginning for once.

I was on this committee last year and after the treaties were ratified in the Senate, people observed that this committee would go out of business. And they also observed that with the tragic death of our distinguished chairman last year that the committee would probably die also.

The point I kept making in my first term was that the House had an integral role to play in the treaties last year, and that we were totally ignored really, and the administration is now just reaping the harvest of ignoring this function of the House of Representatives, which is the money House in our Constitution. It was assumed that we had to put up the money for whatever went down last year.

And I would just like to thank our chairman for these hearings so early in the session, and I do want to compliment our new ranking minority member for not only the aggressive and vigorous way he is pursuing this, but the scholarship that he brings to the questions that we are putting forth to the administration. I had wanted to join you, Mr. Bauman, on the trip down there, but I have been down there three times, and frankly it's depressing to go down to the Canal Zone because you come back with so many thoughtful questions for which the administration doesn't seem to have any answers.

Mr. BAUMAN. I will say to the gentleman from California that he is well-known and well-remembered in the Canal Zone—and out.

Mr. DORNAN. Well, the problem, I think, now is that you are going to have to go back and explain to the administration that the answers just simply must be forthcoming; that we have vigorous representation on both sides of the aisle on this issue; that this committee is alive and well; and that if we have got lots of hybrids down there running around that we want somebody other than the Smithsonian Institution to tell us what is going on in other parts of the canal than what happens on Barro Colorado Island.

I yield back the balance of my time to the ranking member, or pass it along.

Thank you.

Mr. HUBBARD. Congressman Carney of New York.

Mr. CARNEY. Mr. Foy, I will have to beg your indulgence, I am not an attorney, so I would ask you if you could be so kind as to differentiate for me a U.S. agency and a binational agency in which the United States is a partner.

Mr. FOY. I am not sure that I can, Mr. Carney. In point of fact, what we have, if we look at the existing organizations and arrangements, is a spectrum.

All international or binational organizations that are established by treaty exist pursuant to our law in the sense that a treaty is a law of the United States. The Constitution does not contain the phrase "agency of the United States"—that is a phrase without constitutional significance in itself. In analyzing the constitutionality of our international arrangements, you have to look instead, I think, to the function that the treaty or the international organization or the cooperative agreement is designed to discharge, and then you have to look at the Constitution and see whether this is something in which foreign countries can participate.

I know that that answer is vague, but that is the best answer I can give you.

Mr. CARNEY. Well, I might say that that perhaps is the most important question that was asked this morning—and I don't mean any disrespect to my colleagues, who have been asking very important questions this morning—because article 3, paragraph 3, states that the U.S. Government agency, the Panama Canal, is a U.S. Government agency. It does not say it is a binational agency; it is a United States Government agency.

And I would like to know if you could tell me of any U.S. Government agency in our 202- or 203-year history that has had members in that agency that were not U.S. citizens.

Mr. FOY. Well, I was cited to an apparent example earlier in the testimony, earlier in the proceedings, in the case of a Panamanian judge. Beyond that I can't cite you another example, but there are probably some. I will be happy to get up with the State Department people who have catalogues of these things and provide you with information on that point.

Mr. CARNEY. I might add that the Library of Congress could not find one in their research—perhaps maybe the State Department could.

Interestingly, a couple of days ago in our debate, we talked about the makeup of this Commission and we talked about the administration's feeling expressed in their bill that it should be made up of department heads, so there would be control.

And if I might say, they feared that there might be a loss of control in a U.S. agency if they didn't have five handpicked men of the administration there.

Do you ever remember when the United States was in a position where one of their agencies was questioned as to whether we could have control of it? Or whether we would continue to have control of it?

Mr. FOY. I can't give you an example. There are a number of agencies established under our law that are not subject to the control of the administration, that is to say, the President or the executive branch. For example, the Interstate Commerce Commission—these people are not subject to the control of the executive branch; they serve independently, on their own, and I assume that if the members of the Commission were made by law or by practice independent of the executive branch, that is to say, the five American members, they would be analogous in some respects to the members of the ICC or the FTC, and they would simply pursue their own policies in their best judgment as representatives of this country.

Mr. CARNEY. Mr. Foy, apparently you missed the thrust of my questioning, and it might have been the way I presented it.

What I am saying to you is that the administration was not concerned about the loss within ourselves, with the fact that we could lose control of a U.S. agency—and I have to keep saying that, a U.S. agency—not a binational agency—if we weren't particular as to who we appointed from the United States, because there is only a 5-to-4 relationship, as you know.

Now, I can never remember the United States being in that precarious situation where we had to appoint five people from one segment of our Government because we couldn't trust ourselves to have the House of Representatives put someone on there, because they might not go along with the administration, they might go along with Panama—and then Panama would have control.

Well, at that point I expressed my fear that in fact the ratio favored Panama because the State Department was one of the departments that was going to be on the Commission and that's just as good as making it 5 to 4 Panama.

Now, I am asking you, do you ever remember us being in that position before where we had to worry about losing control of a U.S. agency.

Mr. FOY. I think this is an unusual arrangement. I don't think you will find anybody who will say otherwise.

Mr. CARNEY. I think the entire situation is an unusual situation. As I said before, I am not an attorney—I am just wondering, you are the attorney for the people. Could you tell me—in Government (and pardon my ignorance) whenever there has been false testimony made or whenever we have drawn a conclusion or created a law under false pretenses, does that law still hold?

Mr. FOY. I take your question to be, for example, if a bill is based on testimony offered at a committee hearing and the testimony proves to be false, is that law still law?

Mr. CARNEY. Right.

Mr. FOY. I think the answer is yes, it is still law.

Mr. CARNEY. That's unfortunate, because perhaps we could get out of this treaty, if it wasn't.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Carney. We are almost through, Mr. Foy.

We will recognize Congressman Bauman again.

Mr. BAUMAN. I would like to ask unanimous consent, in pursuance of the questioning of Mr. Foy, that when we receive the statement from the Bar Association of the Canal Zone that it be submitted by the chairman of our subcommittee to the Department of Justice for a complete answer to all the questions raised in that statement. That might be a better way of proceeding.

Mr. FOY. That would be very helpful.

Mr. HUBBARD. Congressman Carney.

Mr. CARNEY. Mr. Chairman, I would like at this time to ask for permission to insert the Library of Congress reports on the agencies where they never found an agency of the United States to have a nonnational serving on it, if I might.

Mr. HUBBARD. All right, without objection, it is so ordered.

[The following was received for the record:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 14, 1979.

To: House Merchant Marine and Fisheries Committee, Panama Canal Subcommittee, Attention: Nick Nonnenmacher.
From: Stephen W. Stathis, Analyst SWS Government Division.
Subject: Foreign citizens who have served as high level officers in a U.S. agency.

In response to your inquiry and subsequent telephone conversation relative to appontment of foreign citizens to high level positions in the United States government, the following information is presented for your consideration.

As far as we are able to determine, it appears highly unlikely that a foreign citizen (national) has ever been appointed to a high position in the United States government.

Supreme Court Justice Louis Dembitz Brandeis in his dissenting opinion in *Myers* v. *United States* (1926) does indicate that "Congress has, from time to time, restricted the president's selection by the requirement of citizenship. It has limited the power of nomination by providing that the office may be held only by a resident of the United States; of a state; of a particular state; of a particular district; of a particular territory; of the District of Columbia; of a particular foreign country." (272 U.S. 265-267)

In the last of these instances, Congress approved legislation that became law on March 3, 1819, which provided "That the President of the United States be, and he is hereby, authorized. . . . to appoint a proper person or persons, residing upon the coast of Africa, as agent or agents for receiving the negroes, mulattoes, or persons of colour, delivered from on board vessels, seized in the prosecution of the salve trade, by commanders of the United States' armed vessels." (3 U.S. Stat. 533).

This is the only instance that we have been able to identify where Congress has authorized a President to appoint a foreign national to an official government position.

I hope this information will meet your needs. If I can be of any further assistance to you, please contact me at 426-5827.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 12, 1979.

TO: Panama Canal Subcommittee, Nick Nonnenmacher.
FROM: American Law Division.
SUBJECT: Matters Relating to the Panama Canal Commission.

This memorandum is submitted in response to your query of Februry 9, 1979 regarding two matters relating to the Panama Canal Commission.

First, the Panama Canal Treaty explicitly states that the commission is to be ". . . a United States Government agency . . . constituted by and in conformity with the laws of the United States of America". *Panama Canal Treaty*, Article III, para. 3. Therefore, the commission is thereby a U.S. government agency.

Second, you have asked us to determine whether any previous U.S. government agency has been composed of foreign nationals to the extent that the Panama Canal Commission will be (if the proposed implementing legislation is enacted). We have been unable to discover from available materials any similar agency. However, a more thorough historical analysis will be undertaken elsewhere in the Congressional Research Service and forwarded to you upon completion.

KENNETH D. MERIN,
Legislative Attorney.

Mr. HUBBARD. That concludes the questioning of Miles Foy, attorney-adviser, Office of Legal Counsel, Department of Justice.

We thank you for being with us. You were asked difficult questions that were not even debated in the Senate when the Senate, in its wisdom, ratified these unfortunate treaties.

We thank you for being with us, and you answered the questions as well as you could—and, as an attorney at law who at times has not had all the answers, I sympathize with you.

Mr. Foy. Thank you, Mr. Chairman.

STATEMENT OF DARIUS GASKINS, DEPUTY ASSISTANT SECRETARY FOR POLICY AND EVALUATION, DEPARTMENT OF ENERGY, ON BEHALF OF HON. AL ALM, ASSISTANT SECRETARY

Mr. Hubbard. Our next and last witness is Al Alm, Assistant Secretary of Energy for Policy and Evaluation. We have asked the Energy Department, and Mr. Alm, to comment upon the flow of Alaskan North Slope oil through the canal. We know that this is a significant matter upon which the financial solvency of the Panama Canal Commission may turn

Mr. Alm, thank you for testifying today.

Mr. Alm, after all that introduction and the kind remarks about him, is not here. His substitute is here—Darius Gaskins, the Deputy Assistant Secretary, who is to testify in the absence of Mr. Alm. We know that you, too, will give us significant comments about the financial solvency of the Panama Canal Commission as influenced by the flow of Alaskan North Slope oil through the canal.

Go ahead.

Mr. Gaskins. I would like to present Mr. Alm's testimony, and apologize to the subcommittee: Mr. Alm was detained at a proceeding before the Interstate Commerce Commission and could not make this appointment.

Mr. Chairman, members of the subcommittee, I am appearing before the Panama Canal Subcommittee to present the views of the Department of Energy on the use of the Panama Canal as a means for transporting energy to meet U.S. needs. Instead of commenting on the specific provisions of the pending legislation for implementing the Panama Canal Treaty of 1977, which will be addressed by other representatives of the administration, I believe it is more appropriate for me to discuss the role of the Panama Canal in the context of national energy policy.

The canal is presently used for the transshipment of approximately 300,000 to 400,000 barrels per day of Alaskan North Slope crude oil, ANS crude oil, to the gulf coast for use as gulf and midwest refinery feedstocks. Recently, the canal has also been utilized for shipment of petroleum products between U.S. regions, but these volumes have been quite small compared to the present volumes of ANS crude being shipped.

ANS production has increased from about 300,000 barrels a day in 1977, to approximately 1.2 million barrels per day as of September 1978. However, west coast demand requires no more than about 800,000 barrels per day of North Slope crude, resulting in the 400,000 barrel per day surplus being transported elsewhere. Because of legal restrictions on exports and the absence of more efficient west-to-east crude oil transportation facilities such as pipelines, U.S. flag and Jones Act tankers are used to ship this ANS crude via the Panama Canal to gulf coast ports.

The Department of Energy is currently reviewing the effects of this limitation on exports and the unavailability of pipelines. Our preliminary analysis indicates that because of export restrictions and the absence of alternative, more efficient west-to-east crude oil transportation facilities, the wellhead value of ANS crude is diminished by about $2 a barrel. Much of this reduction in wellhead value is attributable to the Jones Act requirement that more expensive American tankers be used to transport domestic production between U.S. ports. Because of this diminished value at the wellhead, which occurs due to the "net-back" of transportation costs, additional ANS production is being discouraged.

The administration has under consideration several policy options for reducing the cost of shipping ANS crude production to market and thus increasing the rate of production on the North Slope. Efficient measures for alleviating the present glut of surplus crude oil on the west coast would also stimulate current depressed production levels of California crude oil. In this context, we are taking a close look at means for facilitating construction of west-to-east pipeline proposals such as the SOHIO/PACTEX project from Long Beach, Calif., to Midland, Tex., other pipeline options that would make crude available to northern tier states, and exports or exchanges of Alaskan crude with other nations. The national security, economic, and energy policy aspects of these options are being reviewed as are their impacts on the U.S. maritime and related industries.

Our analysis has shown that exports of ANS crude or construction of the SOHIO pipeline from Long Beach, Calif., to Midland, Tex., would generally result in elimination of the canal as a conduit for ANS crude by 1982. If exports of ANS crude are not allowed and the SOHIO pipeline is not built, then the canal would continue to serve as a major artery for transporting ANS crude up to the year 2000.

While no final determinations have been made with respect to adoption of any of the above options, the administration is concerned with obstacles that discourage domestic energy production. If modifications or a combination of these options are implemented, it is likely that use of the Panama Canal for transporting crude oil would be substantially reduced. Under circumstances that would require continued use of the canal for transportation of ANS crude indefinitely, however, the Department of Energy believes that the administration's proposal for implementation of the Panama Canal Treaty of 1977, H.R. 1716, is adequate for assuring continued movement of ANS crude.

That concludes Mr. Alm's testimony.

Mr. HUBBARD. Thank you very much, Mr. Darius Gaskins.

[The following was received for the record:]

QUESTIONS OF SUBCOMMITTEE ANSWERED BY THE DEPARTMENT OF ENERGY

Question 1. Of what importance is the Panama Canal as an artery for the transit of energy to various parts of the United States? What future role is projected for the Canal in meeting the energy needs of various regions of the United States? Are there any particular elements of the new Canal regime that you believe are particularly important for the continued movement of energy material through the Canal?

Are there any provisions of the two pieces of legislation which you look upon as particularly important to the continued transit of energy material?

Answer. The Panama Canal is currently a major artery for the transit of Alaskan North Slope (ANS) crude oil to the Gulf Coast. Approximately 400 thousand barrels per day (MB/D) of a total production of 1,200 MB/D of ANS crude is shipped through the Panama Canal to the Gulf Coast for use in Gulf and Midwest refineries.

The primary reason for this extensive utilization of the Panama Canal for transshipment of ANS crude is the absence of more efficient west-to-east pipelines and statutory limitations contained in the Export Administration Act and the Mineral Leasing Act on exports of this crude oil to foreign countries. With respect to pipelines, the Administration has endorsed construction of the SOHIO/PACTEX project from Long Beach, California to Midland, Texas and is reviewing various proposals for delivering crude to northern tier states. Regarding statutory limitations on exports, under the Mineral Lands Leasing Act, as amended by the Alaska Pipeline Act, export of any U.S. domestically produced oil is not permitted without Presidential authorization subject to a congressional veto if at some point it is carried in pipelines over Federal rights-of-way such as the Trans-Alaska Pipeline. Even stronger prohibitions on such exports are contained in the Export Administration Act as amended by the Export Administration Amendments of 1977. There are exceptions and waivers to these prohibitions, but they are relatively limited in scope.

Production of ANS crude increased from 300 MB/D in 1977 to 1,200 MB/D by September 1978. However, demand on the West Coast for ANS crude has only been sufficient enough to absorb 800 MB/D resulting in a surplus to West Coast needs of 400 MB/D. Due to the above referenced statutory requirements and the absence of cheaper U.S. transportation alternatives, this surplus has been shipped through the Panama Canal to the Gulf Coast.

The response to question 2 and Assistant Secretary Alm's prepared statement discuss policy options which may moderate or preclude use of the Panama Canal for transportation of ANS crude. If these initiatives were implemented, the energy policy significance of the canal would be reduced substantially. Under cricumstances that would require continued use of the Canal for transportation of ANS crude indefinitely, however, the Department of Energy believes that the Administration's proposal for implementation of the Panama Canal Treaty of 1977, H.R. 1716, is adequate for assuring continued movement of ANS crude.

Question 2. What is the best estimate of the magnitude of Alaskan oil that will transit the Panama Canal up to the year 2000? What factors might cause a precipitous drop or a sudden increase in the amount of Alaskan oil carried through the Canal? Are any rapid declines or increases in the amount of Alaskan oil carried through the Canal likely to occur?

Answer A. Transportation through the Panama Canal could be as high as 1.5 MMB/D in 1990 under assumptions of high production and no west-to-east pipelines coupled with allowance of some exports would result in no oil traffic through the canal. The first case is unlikely to occur since the producer incentives would be diminished by the high transport cost through the Panama Canal.

Exports of ANS crude or construction of the SOHIO pipeline from Long Beach, California to Midland, Texas, would generally result in elimination of the Canal as a conduit for ANS crude in the 1980–1982 time frame. If exports of ANS crude are not allowed and the SOHIO pipeline is not built then the Canal would continue to serve as a major artery for transporting ANS crude up to the years 1990–2000, depending on the level of production. If exports are not allowed and the SOHIO pipeline is built, the Canal would be used through the year 1982 under low production assumptions and through the year 2000 under high production assumptions.

The Department of Energy is currently analyzing the affects of various types of crude oil embargoes on the U.S. Included in this analysis is a study of the need of ship either imported or ANS curde from the West Coast to other regions via the Panama Canal. While the analysis is not completed, preliminary indications are that under most circumstances, including implementation of the International Energy Plan (IEP) oil sharing agreement, the Canal would not need to be utilized.

Two questions. Your statement gives the impression that the administration wants to move away from the use of the Panama Canal for transit of Alaskan crude oil because it is not the most efficient route.

It is important for us to know how soon the diversion from the canal is due to occur.

How soon do you think this will happen?

Mr. GASKINS. Well, the administration has not made any decision in this matter, but if a decision were to be made by, say, June of this year, I would anticipate the movement away from canal transshipment would take place almost instantaneously, if that decision involved exporting or swapping crude oil with foreign nations: If that decision involved the go-ahead for certain pipeline alternatives, the decline in transshipment through the Panama Canal would be much slower.

Mr. HUBBARD. And, lastly, would you change your views on transit of Alaskan oil via the canal if the oil were transiting a sea-level canal which could accommodate vessels with up to 150-foot beam?

Mr. GASKINS. Certainly a canal which would allow transshipment by larger, more efficient craft would improve the economics. The question remains whether or not those would be Jones Act tankers. Such a canal wouldn't eliminate the total penalty for marketing the oil through the Panama Canal if you continued to use Jones Act ships.

In addition—we have not done this analysis—but it is my presumption that some of that oil might still move to other ports, even if the Government didn't preclude it.

Mr. HUBBARD. Could you provide some more information on this matter for the record later?

Mr. GASKINS. I would be glad to supply the record additional information on the question.

[The following was submitted:]

AMOUNT OF ALASKA OIL GOING THROUGH THE PANAMA CANAL

In fiscal year 1978 (October 1977–September 1978) an average of 317,000 barrels per day (BPD) of Alaskan oil moved through the Canal. During the first five months of fiscal 1979, the average has been 338,000 BPD. The range in the daily rate has varied considerably. For instance, in January 1978, an average of 166,000 BPD of Alaskan crude moved through the Canal. This rose steadily to a peak of 489,000 BPD in July 1978, but then fell to 390,000 BPD in October 1978. The ranges reflect a number of factors, including increased capacity in the Trans-Alaska pipeline, temporary breakdowns in the pipeline system, and weather conditions that sometimes have resulted in delays in loading tankers at Valdez, Alaska.

VIEWS ON TRANSIT OF ALASKAN OIL IF TRANSITING A SEA-LEVEL CANAL

As stated in our testimony, certainly such a canal would allow transshipment by larger, more efficient craft which would improve the economics. At the same time, however, a sea-level canal would—because of its costs—presumably require much higher tolls.

Also, it seems unlikely a sea-level canal would be more efficient than other alternatives such as west-to-east pipelines or exchanges with Japan. At any rate, we have no analysis on hand that would show whether the efficiencies gained from a sea-level canal would be greater than other transit alternatives.

Mr. HUBBARD. Thank you very much. I believe Congressman Bauman is away. Congressman Carney?

Mr. CARNEY. Am I correct in assuming that the administration would prefer to use a method other than the Panama Canal to transport Alaskan North Slope oil?

Mr. GASKINS. It's premature at this time for me to give you any indication of the administration's position, because it is my understanding that the administration does not have a position on that issue. We have done an analysis in the Department which indicates that there will be substantial economic benefits to the Nation if we found some other means of shipping crude oil to whatever market is concerned—but it is not clear that the administration has adopted that position.

Mr. Carney. When you did your analysis of the substantial economic benefit that the people of the United States would gain by using another method, did you compute into that how much money it would cost the United States to continue the canal operation because of the loss of revenue that they would receive from the amount of oil going through it now?

Mr. Gaskins. To my knowledge, we did not include any cost borne by continued maintenance of the canal which is not used for transshipping oil, but I will check that question for the record.

Mr. Carney. It is entirely possible, then—go ahead.

Mr. Gaskins. We did not include any such costs, no.

Mr. Carney. Then it is entirely possible that what the U.S. citizen would gain in one pocket would be lost in the other because we would have to subsidize the canal operations because of loss of tolls?

Mr. Gaskins. I would be glad to do that calculation for the committee. It's my guess that is fairly unlikely, Congressman. It is my understanding that one or two ships a day go through the canal, and I doubt very much that the shortfall associated with the demise of that number of ships would compensate the Nation for the benefits from using a more efficient crude oil delivery system.

But I will be glad to do that analysis for you.

[The following was received:]

Loss if Alaska Oil Not Transiting Canal

The canal receives some $23–25 million annually in toils for moving Alaska crude oil.

If the Panama Canal Company's request for a 15 percent increase for fiscal year 1980 is approved, this would increase the revenues for moving Alaska crude to $26–28 million annually.

Currently, about 38 to 40 ships transit the Panama Canal each day. Since only 1–2 ships per day carry Alaska crude, these shipments are not the Canal's principal support.

Mr. Carney. Well, the administration's claims as to this treaty not costing the U.S. taxpayers any money—I am just bringing this up for general information--is based on the fact that there will be tolls from the Alaska crude oil going through. Apparently one hand is not telling the other hand what is going on—and I am not directing that at you; I am just making that a comment for the record, if I might.

Do you know the exact status of the California approval of the pipeline from California to Texas as far as the——

Mr. Gaskins. I would be glad to provide a description of the exact status for the record. Briefly I can summarize my understanding of the status.

There are several obstacles: The local clean-air authority has raised objections with the air emissions tradeoff package; there is a case pending before the supreme court in California, which could jeopardize the PACTEX line; and there is a question of compensation to El Paso for a gas line which is going to be reversed, which must be cleared up. So there are a whole series of obstacles to the development of the SOHIO/PACTEX line. However, the Department remains confident that these obstacles can be overcome.

[The following was received:]

SOHIO PACTEX Pipeline Proposal

Four key issues exist at the state or local level and each requires a desision by a separate governmental body. First, a local permit must be obtained from the South Coast Air Quality Management District (SCAQMD) regarding the air emissions trade-off package proposed by SOHIO and accepted recently by the California Air Resources Board. SCAQMD has some concerns over the scrubber equipment to be installed in Southern California Edison's facility. Hearings are expected to be held this month on the trade-off package.

Second, SOHIO recently asked approval to put two petroleum storage tanks in Long Beach harbor. Approval for this must come from the California Coastal Zone Commission.

Third, a lawsuit is pending before the California Supreme Court challenging the efficiency of the State's Environmental Impact Report. It is not known when the Court will act on this. Fourth, approval is needed from the California Public Utilities Commission for abandonment of the gas pipeline in California that is expected to be converted to oil use.

Mr. **Carney**. You indicate that you think they could be overcome in your statement by 1982, is that correct?

Mr. **Gaskins**. Yes; if they are overcome and the SOHIO/PACTEX line is built, transshipment through the canal of substantial quantities of ANS crude would be eliminated by 1982.

Mr. **Carney**. If this went through, you feel that substantial quantities of Alaskan North Slope crude would cease going through the canal?

Mr. **Gaskins**. That's right.

Mr. **Carney**. By 1982?

Mr. **Gaskins**. By 1982.

Mr. **Carney**. Once again we have the conflict, because in Panama we have so much faith that this oil will continue to go through the canal, and it's very important for the economic well-being of the Panama Canal Commission, and that importance, of course, relates back to the idea that it is not going to cost the taxpayers any money.

You have statistics that you can give us as to the transit from the east to west coast through the canal of refined gasoline?

Mr. **Gaskins**. I can provide for the record statistics. It is a very small amount of gasoline that has been shipped to California, but I would be glad to provide that for the record.

[The following was submitted:]

Transit, East to West, of Refined Gasoline

Based on data from the Panama Canal Company, an average of about 24,000 barrels per day of gasoline moved from the East to West Coast via the Canal during fiscal year 1978 (October 1977–September 1978).

Mr. **Carney**. One other question. Could you tell me what the loss is between crude and gasoline? Now, what I am saying is the amount of volume necessary—how many gallons of crude does it take to make a gallon of gasoline? There's a loss in there through the refining process.

Mr. **Gaskins**. I can provide for the record the details, but it is my understanding that the actual loss is quite small. What happens is that a barrel of crude oil is cracked into multiple products, gasoline being a major one for domestic refineries. Much of the crude oil is turned into other products; For example, it is turned into residual fuel oil or asphalt or some other product. The actual losses themselves, if any, are quite small.

I would be glad to provide details for the record.

[The following was received:]

LOSS BETWEEN CRUDE AND GASOLINE IN REFINING

To answer this, it is important to make some distinctions. First of all, the most important determinant of gasoline volumetric yield from crude relates to the specific gravity—the weight—of the crude. The lighter the crude the more gasoline can be produced and vice versa.

After considering specific gravity, the second important determinant of gasoline yield produced relates to the type of refinery process configuration. The more complicated the configuration the more gasoline that can be produced. In the simplest configuration (the topping refinery), for example, no gasoline is produced. In the most complicated configuration (the high conversion refinery), on the other hand, the gasoline volumetric yield can be as high as 75 percent.

The fact that gasoline yields vary according to the refinery process does not mean the residue is lost, however. Instead the residue is turned into other petroleum products such as residual fuel, kerosene, asphalt or some other product. Moreover, as in the case of gasoline, the respective yields of these other products depend on the type of refinery process configuration.

Finally, whether or not an actual volumetric loss occurs when the crude is converted into various petroleum products also depends on the refinery process configuration. For some processes, in fact, a volumetric gain will occur. This is the result in the complicated refinery processes that have the high gasoline yields. Conversely, a small loss occurs in the simpler refinery process configurations.

Mr. CARNEY. I would appreciate that, because of the impact of the raising of the tolls. We are trying to figure out what the impact would be on gasoline and the availability of gasoline when they raise the toll.

Thank you very much. No further questions, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Carney. Thank you, Mr. Gaskins.

Before you leave, would you agree to give us in writing more precise statistics about the amount of Alaskan oil going through the Panama Canal daily?

Mr. GASKINS. I would be glad to do that.

Mr. HUBBARD. You made a comment earlier and I wonder if it's correct. It could be. Would you provide that in writing when you research those statistics?

Mr. GASKINS. I would be glad to do that.

Mr. HUBBARD. We thank you for your excellent testimony as a substitute for Mr. Alm.

This concludes the hearings today, and we stand adjourned until the call of the Chair, which probably will be next Tuesday, March the 6th.

[The subcommittee adjourned at 12:59 p.m.]

CANAL OPERATION UNDER 1977 TREATY

WEDNESDAY, MARCH 7, 1979

House of Representatives,
Subcommittee on the Panama Canal
of the Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:17 a.m., in room 3571, House Annex No. 2, Hon. Carroll Hubbard, chairman of the subcommittee, presiding.

Present: Representatives Hubbard, Bonior, Anderson, Evans, and Carney.

Staff present: Bernard Tannenbaum, special counsel; Terrence W. Modglin, staff director.

Mr. Hubbard. The Panama Canal Subcommittee will now come to order. Our first witness this morning at the hearing is Dr. Charles H. Breecher. I would like to defer at this time to a distinguished member of our full committee, the Congressman from Delaware, Thomas B. Evans, who will present Dr. Breecher. Tom?

Mr. Evans. Mr. Chairman, thank you for giving me the opportunity and the privilege of presenting my friend, Dr. Charles Breecher. Dr. Breecher is one of the most knowledgeable people in our country today on issues relating to the Panama Canal Treaty; and specifically, to the question of implementing legislation for the Panama Canal Treaty.

I am very pleased and grateful to you, Mr. Chairman, for scheduling this hearing this morning so that Dr. Breecher could be with us. I have repeatedly brought to the attention of the Justice Department the legal problems raised by Dr. Breecher to the implementing legislation. Frankly, I hope the committee has more success than I have had in ferretting out answers from the administration on the many difficult issues surrounding this entire matter. After months of waiting for a response, the Justice Department finally told me that they would respond to Dr. Breecher's arguments at these hearings. But one really gets the impression that they have no answers.

So, Mr. Chairman, it is a great pleasure and privilege to introduce my friend, who is not only an expert on the Panama Canal, but is a very fine economist and journalist, and a very fine constituent of mine in Delaware, Dr. Charles Breecher.

Mr. Hubbard. We are glad to have you, Dr. Breecher. We are glad to accommodate you in these hearings.

STATEMENT OF CHARLES H. BREECHER, JURIST

Dr. BREECHER. Mr. Chairman, I greatly appreciate this opportunity and privilege to testify before this committee. My testimony concerns one point only, but a point of fundamental importance, and that is that the proposed legislation, H.R. 1716, which attempts to set up the Panama Canal Commission, a U.S. Government agency, in accordance with the Panama Canal Treaty of 1977, is in conflict with the provisions of the U.S. Constitution.

The legislation introduced by the executive branch is unconstitutional beyond any doubt. Mr. Chairman, showing that the setting up of the Panama Canal Commission, as ordained in the treaty, is unconstitutional, is a simple, straightforward issue, even though it has not been fully debated yet and the executive branch has given no answers, as Congressman Evans just outlined.

I have yet to hear, after a full year, one respectable legal argument in rebuttal from anybody, and I must have talked to hundreds of knowledgeable jurists, among others. I feel very much like the child who shouted that the emperor has no clothes on.

The Panama Canal Commission is a U.S. Government agency; the treaty says so and the implementing legislation says so. All its nine members exercise significant U.S. governmental authority. Accordingly, and pursuant to the Supreme Court's definition of who civil officers of the United States are in *Buckley* v. *Valeo,* a 1976 decision, all nine directors of the Panama Canal Commission are U.S. civil officers.

But the implementing legislation, pursuant to the wording of the Panama Canal Treaty of 1977, provides that there should be four Panamanian nationals, nonresident aliens—and I stress the word "nonresident"—on the Commission. Further, the President must, according to the legislation which follows the treaty, appoint the nominees of the Panamanian Government in a timely manner. He must remove them at Panamanian request, and he cannot remove them without Panamanian consent.

Although they are superior officers, they are exempted by the legislation from Senate advise and consent to their appointment.

Now, these provisions violate the U.S. Constitution, as interpreted by various Supreme Court decisions which I shall cite, on five major counts. Every one of these counts is sufficient to deem the legislation unconstitutional beyond any reasonable doubt, as follows:

A President's right to appoint cannot be restricted by law to the point where he has no choice at all but to appoint somebody else's nominee in a timely manner.

Second, the President's power to remove executive officers cannot be restricted in any way, nor can it be usurped by someone else at whose request he must remove.

Third, the Senate's right to give advice and consent to appointments can be abridged only for inferior officers, not for superior officers.

Fourth, and here I come to the most important rights of individual U.S. citizens, nonresident aliens owing no loyalty to the United States cannot become U.S. civil officers.

And, fifth, the Congress has no power to exclude all 220 million Americans from certain U.S. civil offices because of their citizenship.

These constitutional points are of such great importance that I ask your indulgence, Mr. Chairman, to treat them in some detail now. I would also ask, Mr. Chairman, that subsequently I be questioned on any point which might appear at all doubtful or unclear to any member of this committee.

I have to be a little longer than I had hoped I would have to be in addition to my written statement, because a lot of information has been given in written testimony to this committee, which, with all due respect, is at least misleading, if not outright wrong.

If I may take the five constitutional issues in order of their importance, you might want to skip to page 4 of my written statement.

First: What limits can be placed on the appointive power of the President? It is a generally accepted rule of American constitutional law that the power to appoint must include not only the right to name and go through the ministerial function of naming somebody, but at least some limited right of selection. I cite a New York case here, but much more important is *Buckley* v. *Valeo,* where the Supreme Court ruled that the President's power to appoint cannot be usurped by any other agency.

Now, how far can the Presidential power be narrowed by law? It can be narrowed by law to a limited number of nominees. This is unsettled, except that the qualifications may not so limit selection and so entrench upon executive choice so that they are, in effect, legislative designations.

With all due respect, the Congress could not say that one of the qualifications for the next Secretary of State has to be a Delaware Congressman; that would be legislative designation. [Laughter.]

Mr. EVANS. I am sorry about that.

Dr. BREECHER. A recent Congressional Research Service—Library of Congress report of 30 January, 1978, comes to this conclusion: Some choice, however small, must be left to the appointing authority of the President. This report can be found in the Congressional Record, Senate S560 to 61, of 17 April, 1978, which was introduced by the senior Senator from Delaware, Senator Roth.

It is interesting and illuminating that this memo of the Congressional Research Service was written in defense of the constitutionality of a provision in chapter 38 of S. 1437—that is the Criminal Code Reform Act—because this chapter originally provided that three of the seven members of the U.S. Sentencing Commission would be appointed by the Judicial Conference of the United States; in other words, it took away the appointing power from the President. This was objected to in the Senate as unconstitutional, in view of *Buckley* v. *Valeo.*

The provision was then amended that the President would select three out of seven members, and objections were raised that this limited the President's appointive power too much. It was in defense of selecting three out of seven that this was written.

But it is absolutely clear that you cannot limit the Presidential appointive power to where he has no choice at all but to appoint whomever the Panamanians put before him. And under the

Panama Canal Treaty, the President would have no choice at all but to appoint the Panamanian nominees in a timely manner.

At this point, Mr. Chairman, it seems appropriate to deal briefly with the relationship of the treaty to the U.S. Constitution and U.S. legislation. I hope, Mr. Chairman, you will bear with me because, as I mentioned, what information the committee has received—and sometimes a little tricky—is at least somewhat misleading.

The Panama Canal treaties, to the extent that the provisions are not self-executing, impose an obligation, under international law, on the President to cause to be proposed implementing legislation to the Congress pursuant to the treaty.

Now, that duty in international law which the President has, if the treaty is in effect and if it is valid, must, of course, take second place to the President's oath under the Constitution to preserve, protect, and defend the Constitution of the United States.

Unless the President has a reasonable cause to believe that the law does not violate the Constitution, he may not advocate it and he may not sign it without breaking his oath of office, an impeachable offense. He does not need a certainty, of course; just a reasonable cause to think—and it may turn out later to be erroneous—that the legislation is in accordance with the U.S. Constitution. But he must have a respectable case.

Now, testimony has been given to this committee—and I refer to the written statement by Mr. Foy, to which I will come back later, of the Department of Justice—he says in there that a treaty is the law of the land. Now, that statement can easily be misunderstood and needs a lot of qualifications.

Any provisions of a treaty that are not self-executing are not—I repeat, not—the law of the land, unless and until the Congress enacts these provisions into legislation. As far as the House is concerned, other than a decent respect for the President and the Senate, there is nothing that forces the House to enact that legislation. That rule was laid down 150 years ago by Chief Justice Marshall in *Foster* v. *Nielsen,* an 1829 decision, when Chief Justice Marshall, speaking for the Court, said the following:

"Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature whenever it operates of itself without the aid of any legislative provisions.

"But when the terms of the stipulation import a contract when either of the parties engages to perform a particular act, the treaty addresses itself to the political not the judicial department"—the "political department" meaning, of course, the executive branch—"and the legislature must execute a contract before it can become a rule for the court."

In other words, until such time as the non-self-executing provisions of the Panama Canal Treaty are enacted by the Congress, which of course includes the House, this is not the law of the land.

Now, let us look at the self-executing provisions of the treaty. These, and the implementing legislation as well, may be amended or abrogated by subsequent legislation, the same as any other law. If there is nothing left to execute, that is, of course, an empty gesture. But if something remains to be done under a treaty, the law that amends the treaty is the rule for our courts.

The Supreme Court has ruled so repeatedly. For instance, I cite the case of *John King* v. *The United States,* when a prior treaty with China guaranteeing Chinese laborers the right to reenter the United States was abrogated by Federal statute. The Supreme Court upheld that statute.

Such action by the Congress may be a breach of international law and may give the other party the right to seek damages through diplomatic channels or perhaps to cancel the entire treaty. But the amending legislation stands up in U.S. law.

I am not advocating that this necessarily be done as a practice, but I mention this; that it is quite wrong to put a treaty on a legal pedestal. At best, it is just like any other law, and if a treaty is not valid, for whatever reason, congressional action to not implement the treaty is not only legal, but also morally perfectly proper, and indeed may be the sworn duty of the Members of the Congress if the treaty proscribes legislation which is unconstitutional in U.S. law.

Now, when I come back to the Panama Canal provision, the treaty is, of course, not self-executing, as indeed the language of article III of the treaty itself states. For the convenience of the members of the committee, I have put the text of this article III in my written statement.

But that article III states, "called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States." Now, that treaty language, while unobjectionable, is surplusage, because as a U.S. Government agency, the Panama Canal Commission can be created by law only; no treaty can create a U.S. Government agency.

Further, a treaty has no bearing whatever on the constitutionality of subsequent U.S. legislation, because a treaty cannot amend the Constitution of the United States. If legislation cannot be enacted under the Constitution but there is a prior treaty, it does make the slightest difference.

The Supreme Court has laid to rest any unfounded doubts on this matter in a 1957 decision, *Reid* v. *Covert.* Justice Hugo Black, delivering the opinion of the Court after quoting article VI of the Constitution, said, "There is nothing in this language"—meaning in article VI—"which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution * * *. It would be manifestly contrary to the objective of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by article V."

Well, in conclusion, since the President must, under the implementing legislation, appoint a nominee or nominees of the Panamanian Government in a timely manner, this provision would violate article 2, section 2, clause 2 of the U.S. Constitution. It is irrelevant what the treaty says on this point, because a treaty cannot amend the U.S. Constitution.

Now, I go to issue 2: What limits can be placed on the President's power to remove civil officers? The removal power is, of course, closely linked to the power of appointment, and while the Constitution does not specifically mention it, it has been adjudicated by the Supreme Court, particularly in the basic of decision in *Myers* v. *The United States,* a 1926 decision. You, Mr. Chairman, and maybe others, may remember this as the Oregon postmasters case. And then there were subsequent cases—*Morgan* v. *TVA* simply confirmed this, and *Humphrey's Executor* v. *The United States,* and *Wiener* v. *The United States* equally dealt with this matter.

Now, it results from these Supreme Court decisions that under the Constitution, the power of the President to remove executive officers is absolute; it cannot be restricted in any manner. There is a long opinion by Justice Taft—himself a former President and, of course, Chief Justice—"Congress can restrict Presidential removal power only for quasi-judicial or quasi-legislative officers."

Of course, none of these decisions lends any support to the thesis which is contained in the Panama Canal Treaty of 1977 and implementing legislation, that a President's removal power may be restricted to the point where he cannot remove, for any reason, except with the consent of a foreign government.

H.R. 111, which is the bill introduced by Chairman Murphy of the full committee, of course, corrects this particular constitutional defect, because it provides unrestricted removal power for the President of all members of the Panama Canal Commission.

H.R. 111 also provides for Senate advice and consent to appointments, which is the next constitutional issue which I will address. However, H.R. 111 does not correct the three other constitutional defects which I have mentioned.

Now I come to a very important point. By correcting certain constitutional defects, as is mandatory under the U.S. Constitution for U.S. legislation, H.R. 111, of necessity, violates the Panama Canal Treaty of 1977. And this has a very serious consequence that vitiates all the rights granted to the United States by Panama under the treaty, because these rights, if you look at the wording of the treaty, can be exercised by the United States only—I repeat, only—through the Panama Canal Commission, constituted as ordained in the treaty.

There is no way to square this circle. Unless the treaty is amended, while there is still time—and I will get to the point later of what that means—either the U.S. Constitution or the treaty must be breached by the implementing legislation.

I must add, however, that rejecting the implementing legislation on the grounds that it is unconstitutional is quite different in legal consequences from breaching the treaty by adopting implementing legislation inconsistent with it. In the first place, Congress rejects the implementing legislation as unconstitutional; the United States challenges the validity of the treaty. In the second place, it just tries to confirm the validity of the treaty. Of course, we cannot have it both ways, though it seeks to bend the provisions of the treaty.

The third issue is whether the Senate's right to give advice and consent to appointments can be abridged for the members of the Panama Canal Commission. Obviously, the Senate could not be told that they must confirm in a timely manner, whether they like the Panamanian nominees or not, or whether they want to delay their appointments.

So the issue here is whether the members of the Commission are inferior officers, in which case the Congress could, by law, place the appointing power in the President alone and eliminate Senate advice and consent; that is article II, section 2, clause 2 of the U.S. Constitution.

Now, it is almost unbelievable to say that the members of a commission have no boss at all; it does not have the President as a boss. The President exercises no control over it, and of course nobody else either, according to the treaty, except that he can remove the U.S. members.

They should be inferior officers. This judgment of the Senate must be exercised with some consistency. I know of no case where members of an equivalent commission have been treated as "inferior officers." Incidentally, they are at the level of Under Secretary of State; in fact, the Under Secretaries of State and Treasury were supposed to be the ex officio members of that Commission.

So it is my conclusion—and I will challenge anybody to show why this should not be so—that the term "inferior officers" for purposes of article II, while it has not been judicially defined, given the authority and level of the members of the Panama Canal Commission, an independent U.S. Government agency, and the consistent practice of the Congress with regard to such commissions—the members of the Commission cannot, by law, be exempted from Senate confirmation, unless you breach the U.S. Constitution.

Now, as Chairman Murphy wanted it, you can cure that constitutional defect by providing for Senate confirmation, but then you breach the treaty.

The first two issues are all, of course, in Supreme Court decisions, but the next two issues are so unprecedented that the case has never arisen, so that there is no straight Supreme Court decision on them.

The first issue is: Can a nonresident alien, as these poor Panamanians are, be made, by law, a civil officer of the United States? Does the Congress have the power to make the United States a protectorate?

Now, the U.S. Constitution provides citizenship requirements for elected officers only, for the President, Vice President, Senators, and Members of the House of Representatives. It does not say anything on civil officers. The U.S. Constitution does not say anything about mandatory qualifications for nonelected public officers, except indirectly.

On the other hand, the thesis that a nonresident alien who owes no allegiance to the Government appointing him but owes such allegiance to another country could become a civil officer of the appointing government and exercise a significant part of its authority is not, to my knowledge, accepted by any truly sovereign government on Earth.

The makers of the U.S. Constitution would have been the most unlikely persons to admit that possibility. It would have meant that the United States could have made a treaty with Great Britain and then pass legislation, and then King George could have named the whole U.S. executive and judicial branches.

There are two provisions in the U.S. Constitution which rule out that nonresident aliens can become officials of the U.S. Government. First, article II, section 4 says that all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

How can a nonresident alien commit treason? How can the United States even try him? We have no jurisdiction over him.

Second, article VI, section 3 provides that all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution. Here, also, it is evident that a nonresident alien cannot swear such an oath, because it might bring him in direct conflict with his duties as a citizen of his own country.

Now, the drafters of the implementing legislation seem to have been aware of this problem all along, because their draft of March 3, 1978, and this has been reproduced in H.R. 1716, just says that each director and officer shall take an oath faithfully to discharge the duties of this office. That provision in the law cannot, of course, dispense with the constitutionally required oath for all civil officers.

The conclusion is that the U.S. Constitution, by these two provisions, does not allow nonresident aliens owing allegiance to a foreign country and subject to the jurisdiction of a foreign country to become civil officers in the United States, as the implementing legislation would ordain.

Mr. Chairman, the last issue, but really the most important one, is: Can foreign nationality be made a mandatory qualification to hold an office under the United States? Can the Congress enact a law which creates certain Federal officers, and then exclude all 220 million Americans from holding these offices because they are U.S. citizens?

Now, if foreign citizenship is made, by law, a mandatory qualification to hold a U.S. office, this means that U.S. citizenship becomes an absolute bar for holding this office. This type of provision is unprecedented everywhere and appears repugnant to the U.S. Constitution. Specifically, it appears to be ruled out as a violation of the privileges and immunities of the citizens of the United States which the Constitution mentions.

The Supreme Court has been very reluctant to decide cases on the bases of the privileges and immunities clauses of the Constitution. Instead, they have resorted to some other clause, such as the due process or commerce clause. However, in the *Slaughter House* case in 1873, Justice Miller, delivering the opinion of the Court, specifically included the right not to be excluded from public office because of citizenship among the privileges and immunities of U.S. citizens guaranteed by the Constitution.

Here is what Justice Miller said: "But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded"—namely, property rights—"we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws."

One of these is well described in the case of *Crandall* v. *Nevada*, an 1868 case. It is said to be the right of the citizens of this great country, protected by the implied guarantees of its Constitution, "to share its offices, to engage in administering its functions."

In the same 1873 case, Justice Field said that the privileges and immunities of U.S. citizens are those which, of right, belong to the citizens of all free governments, without other restraints as equally affects all persons. That dictum does not define the privileges and immunities of the U.S. citizens. However, it expresses a principle which has never been questioned, to my knowledge, that whatever rights U.S. citizens may possess as citizens, such as the right to vote or to share the offices of the U.S. Government, may not be restricted to citizens alone without the same restraints applying to noncitizens.

This is precisely what the Panama Canal legislation attempts to do. U. S. citizenship becomes an unsurmountable restraint barring from appointment to certain civil offices under the United States, whereas Panamanian nationals are exempted from this restraint.

This completely anomalous situation appears incompatible with the U.S. Constitution implied guarantees of privileges and immunities of U.S. citizens, and also of substantive due process guaranteed by the U.S. Constitution.

Now, somebody could say that the opinions I have cited are more than 100 years old. Well, the present Supreme Court does not seem to have changed its mind that the Constitution impliedly guarantees U.S. citizens the right not to be excluded from public office because of their U.S. citizenship.

I would like to quote Chief Justice Warren Burger in *Foley* v. *Connelie*; it is a decision less than a year old.

> The essence of our holdings to date is that although we extend to (permanent resident) aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.

I might recall that all these Supreme Court decisions deal with the distinction between citizens and resident aliens; they never ever had a case where you had to deal with the rights of citizens as against nonresident aliens.

To sum up, there is no precedent or authority to support exclusion of all 220 million U.S. citizens from holding certain civil offices under the United States. This thesis is not admitted in any sovereign country. It is, however, very well known to me, because it is very well documented in protectorates and colonies. Morocco and Tunisia prior to 1954 had such arrangements, and I may also recall that a Soviet marshall, Marshall Rokossovski, a member of the Soviet Politburo, held the job of Polish Defense Minister from 1949 to 1956, when he was promoted to become a Deputy Defense Minister of the Soviet Union.

Mr. Chairman, I am sure that the members of the committee, as everybody else, will say at this point, well, how could these five major constitutional issues be disregarded by the U.S. negotiators. Well, I am sorry that the recent record of the Federal bureaucracy.

of which I have been a part for a very long time, shows that the U.S. Constitution is not its major preoccupation.

We might recall the claim to Executive privilege on the Nixon tapes, or the disregarding of the appointment scrolls in the Campaigning Act of 1974. And I have heard recent comments on the SALT treaty that if the Senate rejects it, the President would carry it out anyway.

It does not seem that the bureaucracy—and I am not blaming the President for this—seems to know very much about the U.S. Constitution.

Not one of the many and very prominent and high-class jurists with whom I have talked to about this case, or corresponded with on this case, has yet come up with any halfway respectable legal thesis to support the constitutionality of the draft implementing legislation on any one of these five major points, nor can even a halfway respectable counter-argument be found on even a single issue in communications addressed to Members of Congress or to myself from the Congressional Research Service from one member of the Senate Foreign Relations Committee, who is also a member of the Judiciary Committee, from the Department of Justice—and I will get into that a little later—and from the Department of State—all, of course, trying to support the Panama Canal Treaty and to say that it is constitutional.

It appears that from all that correspondence and all those documents that the unconstitutionality of the implementing legislation on every one of the five points is not subject to even a counter argument.

Mr. Chairman, all of this may sound so unbelievable that I am asking your permission to insert in the record a letter addressed from the Department of State to the senior Senator from Delaware, Senator William Roth. It is attached to my written statement; it is dated May 12, 1978. It took the State Department 6 weeks to reply to Senator Roth's letter, and it is signed by Douglas J. Bennet, the Assistant Secretary of State for Congressional Relations.

What Senator Roth did was to put much of what I have been saying into the Congressional Record, and then to ask the State Department for comments. If I can briefly comment on this letter, on two of the five issues raised, State does not reply at all; they simply ignore them.

There is no mention in the May 12 letter of the President's removal power nor the Senate's right to give advice and consent to appointment of superior officers, both abridged by the treaty.

Now, on the Presidential appointment power, State notes it can be limited by law. That is fine; we know that. But State neither contends nor offers any argument to support that the legislation could limit the President's appointive power to the point where there is no choice at all but to appoint Panamanian nominees in a timely manner.

Mr. HUBBARD. Could I interrupt you just a second and give you time to have a drink of water and take a break?

Dr. BREECHER. That is very kind of you.

Mr. HUBBARD. I find your statements very interesting and helpful. I appreciate your appearing before us. I am trying to give you a chance here to catch your breath. I commend you for coming before us today at considerable sacrifice to enlighten us about some of the constitutional perspectives in the implementing legislation.

I know that you have some difficult days ahead of you from a physical standpoint. We are happy that you made this sacrifice to come before us this morning. Likewise, for our second and last witness, Robert Blake, a retired ambassador with 30 years experience in the American Foreign Service.

At 10 o'clock this morning, the committee chairman, John Murphy, and the subcommittee chairmen are to meet with the House Administration Committee to present our budgets for the full committee and each of the subcommittees. I am proud that I can submit a budget which is less than the budget requested last year. This is the mood of the country.

I need to be present at that event, and Terry Modglin, the head of the staff of our subcommittee, called Chairman Murphy to ask him which I should do—go ahead and preside over this subcommittee hearing or present our budget to the House Administration Committee. He requested that I ask Congressman Dave Bonior to preside over the conclusion of this hearing and for me to be present at 10 o'clock in room 121 of the Cannon Building. Thank you, Dr. Breecher.

Dr. BREECHER. Mr. Chairman, if I might only say, the U.S. Constitution is a very emotional issue with me; the Panama Canal Treaty is not. Therefore, I consider it a privilege, and I am happy, whatever my physical impediments might be, to have this chance to present my views to this committee.

Mr. HUBBARD. Let me speak personally, not necessarily as chairman, and say that I admire your comments. In fact, if you were speaking in my congressional district, you would be receiving standing ovations. That is a district that loves very much the U.S. Constitution and is unhappy about the Panama Canal Treaty. Thank you.

Dr. BREECHER. Thank you, Mr. Chairman, but being happy or unhappy with the Panama Canal Treaty has nothing to do with this. This is purely a constitutional issue, as I will outline.

Mr. HUBBARD. I understand. Excuse me for having to leave and, again, thanks to Congressman Bonior for substituting.

[Whereupon, Mr. Bonior assumed the chair.]

Mr. BONIOR. Please continue.

Dr. BREECHER. Mr. Chairman, I was commenting on the letter which is attached to my statement, which is addressed to Senator Roth, and I will have to come back to that letter a little later. I note that on two of the five major issues which I have raised, State does not say anything; they just ignore them.

Now, on the President's appointment power, they say it can be limited, but they do not tell us how it could be limited to the point where the President has no choice at all and where, in effect, his appointive power is usurped by the Panamanian Government.

Now, on appointing nonresident aliens as civil officers of the United States, State says that the U.S. Government may employ aliens. What has that fact got to do with appointing nonresident aliens as civil officers of the United States? Employing people and the President appointing them as officers are quite different things.

Now, to get over the hurdle that all civil officers of the United States can be impeached for treason, thus ruling out nonresident aliens as civil officers since they cannot commit treason, State offers what as a jurist I can only regard as hilarious.

I quote from that letter:

> The government standard with regard to the crime of treason would differ if the official were a Panamanian national. This poses no constitutional obstacle to the treaty, however.

Mr. Chairman, the crime of treason is explicitly and exclusively defined in article III, section 3, clause 1 of the Constitution. So one really must wonder what different standard State thinks could be applied. Does State contend that the treaty can change the U.S. Constitution, and do they wish to overrule *Reid* v. *Covert*?

On the fifth issue, the right of U.S. citizens to share in the offices of the U.S. Government and to engage in administering its functions, which I have mentioned, State says that if this right should indeed be impliedly guaranteed by the U.S. Constitution, then it can still be abridged by the treaty. Well, that is again the view that the treaty cannot abridge the U.S. Constitution.

Another very funny thing in there, to me, is citing Mow Sun Wong in support of excluding all 220 million American citizens from certain public offices under the United States. Mow Sun Wong involved the employment of permanent resident aliens by the U.S. Government agencies in such positions as janitors and postal clerks. These are very honorable professions, but somewhat different from being a civil officer of the United States who exercises authority on behalf of the United States.

All the Court said was the U.S. Constitution did not bar such employment of permanent resident aliens. If the Congress wishes to bar them by legislation, due process required that the Congress should give some rationale for so doing. What does this case have to do with U.S. civil officers? What does it have to do with nonresident aliens?

Now I come to a very serious matter, Mr. Chairman, which runs through much of the testimony which has been given to this committee. I must take the sharpest issue with the arrogant and discredited theory which this State letter has, that the U.S. Government may abridge constitutional rights of U.S. citizens when such governmental action "serves to enhance Federal interests substantially."

There has been a veritable string of recent decisions—by the way, all decided on the 14th amendment—in which the Supreme Court has given short thrift to this alleged right of the U.S. Government to abridge the constitutional rights of U.S. citizens.

For instance, *Kent* v. *Dulles,* in which the Court decided that the U.S. Government could not, by virtue of its power to regulate foreign affairs, interfere with the right of citizens to travel abroad. The Court said in *Afroyim* v. *Rusk,* a 1967 decision:

> To uphold the Congress power to take away a man's citizenship because he voted in a foreign election in violation of

—a certain statute—

> would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of" and "take away" citizenship. Because the 14th amendment prevents Congress from doing any of these things, we agree.

and so forth.

Considering the foregoing, can it be seriously contended that the President and 67 Senators have the power, even if the full Congress then agrees, to deprive all 220 million Americans of a right to hold certain civil offices under the United States of America?

Mr. Chairman, I now turn to the argument which has recently been presented to this committee by Mr. H. Miles Foy, Attorney-Adviser, Office of Legal Counsel for the Department of Justice. Mr. Foy concedes that the U.S. Constitution does not allow persons owing no allegiance to the United States to become U.S. civil officers.

But he then argues that for that very reason, and because of the lack of U.S. control over them, the four Panamanian directors of the Panama Canal Commission are not U.S. civil officers, in the sense of article II, section 2. In support, Mr. Foy cites primarily the treaty's objectives and the U.S. constitutional power to turn over the canal to Panama.

Mr. Chairman, the reason I did not deal with this argument in my prepared statement is that I have never heard this before from anybody, and it is the exact contrary of what the Government has pretended so far. For instance, if we turn back to that State Department letter of May 12, you will find at the very beginning that it holds the exact opposite; namely, that the four members of the Panama Canal Commission are indeed holding U.S. civil offices, but that Congress has the power to permit their appointment and even to make Panamanian citizenship a mandatory qualification.

I quote from the second paragraph of State's letter:

> Mr. Breecher notes that four of the nine directors of the Panama Canal Commission are to be Panamanian nationals. He questions whether this provision constitutes an impermissible limitation on the power of the President, with the advice and consent of the Senate, to appoint officers of the United States.

But now comes the admission:

> It is clear that, in creating Federal offices, Congress may prescribe qualifications which necessarily limit the scope of the President's appointment power.

State is saying that what the Congress is doing is creating Federal offices. A Federal office, of course, can be held only by U.S. civil officers. Now, Mr. Chairman, it is not clear to me who is talking at this time for the President—the State Department or the Department of Justice. Their respective defenses, as I have just shown, are mutually exclusive, of course.

State's thesis must obviously have been that of the U.S. treaty negotiators, if it was held as late as May 1978. However, it does not matter one bit on which thesis the administration wants to rely; both are without any legal merit.

The Justice Department argument raises a host of constitutional objections, and I would only cite some of the most important ones. Does Congress establish something other than nine U.S. civil offices by creating the Panama Canal Commission by law? If so, what; do they establish positions for Panamanian training or apprentices? Where does Congress derive its constitutional power to create whatever these other offices are supposed to be? Emphatically not from the treaty; the treaty cannot give the Congress any constitutional power.

Second: Can the President appoint persons to be something other than U.S. civil officers? If so, what are these people? Where does the President derive his constitutional authority from to appoint them, if he does not derive it from article II, section 2? Why is this alleged additional appointment power of the President wider than that under the appointment clause? Is there any precedent for such appointment?

I understand that when the witness was asked this, he said that he did not know of any, but that there must be. Well, there are not any.

Third: How can U.S. governmental responsibilities be exercised by persons that are not civil officers of the United States? Consider, for instance, the perfectly likely case that for a particular decision or regulation, the four Panamanians join a U.S. minority of one or two. It is a decision by the Panama Canal Commission, is it not, and the exercise of U.S. governmental power?

When you make one of these arguments, you get yourself caught on another one, which you are making yourself. Mr. Foy says that in contrast to the Panamanian directors, a Panamanian administrator or deputy administrator is a U.S. civil officer, because the United States has control over him through the removal power. That corresponds to the Foy definition of civil officers, but what allegiance does that Panamanian owe the United States? So why is this type of appointment, even according to Mr. Foy, constitutional? Why is it constitutional to exclude all American citizens from that office of administrator or deputy administrator?

Where in the Constitution can any basis be found for the fine distinction made in the Foy memorandum, some of the first part of which I recommend for you to read, that it is all right to give a foreign government a minority voice in a U.S. government agency, but not a majority voice?

Now, unless the Department of Justice furnishes evidence in constitutional jurisprudence to answer the above questions satisfactorily, its memo is merely an unsupported and quite unprecedented reading of article II, section 2 of the U.S. Constitution.

But, mercifully, we do not have to examine the foregoing, and other constitutional objections, one by one, because the Supreme Court, contrary to what the Justice Department memo says, has indeed given us a definition of U.S. civil officers in Buckley versus Valeo, and that fits the nine members of the Panama Canal Commission perfectly and contains none of the concepts in that Department of Justice memo.

I quote from the Congressional Research Service memo of January 30, 1978, which I mentioned on page 5 of my written statement:

> During the course of its decision, the Court wholly redefined the constitutional concept of Federal officer and for the first time supplied substantive meaning to the constitutional terminology.
>
> Specifically, the Court, in Buckley, greatly expanded the class of "officers of the United States." It did so by giving the term substantive content, defining it to include all those persons exercising significant governmental authority. Such authority would include duties and functions relating to the administration and/or enforcement of public laws, but would not encompass duties or functions which operate merely in aid of the legislative function such as investigation or information

gathering. The Court also took pains to make it clear that such offices could be located elsewhere than under the hierarchical control of the cabinet departments.

Mr. Chairman, I rest my case on the Justice Department argument, but permit me to add that nothing I have said here should, of course, cast the slightest aspersions on the Department of Justice or on Mr. Foy personally. Justice Jackson, who was himself a former Attorney General, once remarked with regard to Attorney Generals' opinions:

> The Attorney General has the President of the United States for a client, and it is a lawyer's duty to do what he can through the exercise of his skill and ingenuity to defend whatever case a client has created for himself, be it strong or weak.

In fairness to the present administration, I should also note that there is considerable reason to believe that it inherited from an earlier administration what can only be considered a colossal legal blunder.

Mr. Chairman, at this point, the committee may have every right to wonder why these fundamental and very clear constitutional issues I have outlined were not raised during the long debate on the treaty. In an atmosphere with all the passion this debate created, this is quite natural, and I will give some additional reasons on why this thing happened.

In the first place, when you read the treaty quickly, it indicates that these nine men are some kind of an advisory, binational board outside of the Panama Canal Commission itself. I quote, "The Panama Canal Commission shall be supervised by a board composed of nine members." If you read the whole treaty very carefully, you will find out that there is no Panama Canal Commission other than this board; that these nine wisemen are, indeed, the Panama Canal Commission itself.

Next, the treaty has presented to the Congress the issue of who should dispose of U.S. property—a treaty or the full Congress. This one major constitutional issue would seem to be just enough constitutional baggage for one treaty. Who would suspect that there would be even more evident flaws of a constitutional nature contained in the treaty?

I venture to say that, like myself, you would have to have had some special personal reason to suspect that there might be some constitutional problem with the makeup of the Panama Canal Commission.

Third, the issue did come up for debate, only it was much too late at the time. Senator Roth put it in the Congressional Record; you can find it on S56 through 64 of April 17, 1978. There just was not any time to debate it prior to the scheduled vote.

However, the Senate very wisely, by an 84 to 3 vote, gave itself and the House a full year to consider this and other matters further in the implementing legislation. The Senate accomplished this through the so-called Brooke reservation, the purpose of which was to give the full Congress a year to study implementing legislation which the executive branch has promised for October 1977—I repeat, 1977—and which had been sent to the Senate in draft on the March 3, 1978.

Here, I want to mention a very important point related to the Brooke reservation. It is always said that the Panama Canal Treaties have been ratified; well, they have not. They will not be ratified until the effective date of the exchange of identical—and I repeat, identical—ratification instruments.

In international law, the negotiation of the treaty keeps going until that very moment. Before March 31, 1979, the President can withdraw the instrument of ratification; similarly, the Senate, by two-thirds vote, can amend its ratification resolution of April 18, 1978.

Mr. Chairman, why were these issues so important to the Panamanians? I mean, U.S. Constitution principles are not necessarily important to Panama. Well, this whole set-up of the Panama Canal Commission has very great and immediate practical significance on such matters as how much we shall be paying for Alaska oil, and how much money the Panamanian Government will get from the tolls; hence, the importance the Panamanians attach to having a share in administering the Panama Canal Commission, a U.S. Government agency.

The makeup of the Panama Canal Commission determines effective control over the canal, once the treaties go into effect, until the year 2000 when Panama could have full control, if the treaties go in effect. The way the negotiators set up the Panama Canal Commission, with five U.S. members versus four Panamanian members, may have reassured the U.S. Senate and the American people in making it appear that the U.S. Government would have control over this U.S. Government agency.

In actual fact, Panama will have exercised control right away, for all practical purposes. The reason is, the Panamanian Government could confidently expect that at least one of the five U.S. members of the nine-man Panama Canal Commission would vote with the four Panamanians—that is, if all the U.S. members are there—on any major financial or personnel matters, and perhaps on other matters as well; not the same U.S. member on every issue, of course.

In contrast to the United States, Panama, according to the treaty, has full control over the Panamanian members. Whereas, according to the treaty—and I repeat, according to the treaty, not the implementing legislation—the U.S. members of the Panama Canal Commission would be acting on their own responsibility, subject only to the right of the President to remove them after the fact.

It is like one person holding 45 percent of the voting stock of a corporation, but the other 55 percent is split five ways. The 45 percent holding assures effective control over the corporation.

To sum up, Mr. Chairman, the Panama Canal Commission is an essential element, and indeed a linchpin of the Panama Canal Treaty of 1977. If, as I have outlined, this Panama Canal Commission cannot be established, as ordained in the treaty, without violating the U.S. Constitution, then the treaty cannot be implemented, unless and until it is suitably renegotiated.

The alternative—namely, amending the legislation to conform with the U.S. Constitution, and Chairman Murphy comes very close to that by saying that at least five members should be U.S. citizens—that would unfortunately bar the United States from exercising any rights under the treaty, because these rights are granted to the United States by Panama as a territorial sovereign and may be exercised by the United States only through the Panama Canal Commission, constituted in accordance with the treaty provisions.

Under these circumstances, if this committee wishes to give the President a third chance, it would seem mandatory that he now put before you whatever legal case he may still wish to make in defense of the constitutionality of legislation.

However, unless this committee is given legal argument satisfactory to the committee in a timely manner which clearly addresses the five major constitutional issues raised, it appears that the implementing legislation should not be considered further, but be rejected as clearly unconstitutional.

In conclusion, Mr. Chairman, let me stress that the Supreme Court is not the only guardian of the U.S. Constitution. The Congress is just as much its guardian. There is one limitation, and only one, on the great and awesome power of the elected representatives of the people: To vote for whatever legislation they, and only they, might deem appropriate. That limitation almost never comes into play, but it applies in this case.

Unless a Congressman or Senator has reasons satisfactory to himself which tend to show substantively that the legislation he is considering does not violate the U.S. Constitution, he or she is under disposal of office to support the Constitution, obligated to raise the constitutional issue, and to oppose that legislation.

In the case of the Panama Canal implementing legislation, it makes no difference if any member of the first branch of our Government should believe, quite erroneously, that a treaty giving the canal to Panama will go into effect on October 1, 1979, regardless of what the Congress or the President may do in the meantime, so that while he himself opposes the treaty the lesser of two evils would be if the constitutional issue is not raised and the implementing legislation passed, so the United States will at least retain some rights.

Nor does it make the slightest difference if a supporter of the treaty thinks the implementing legislation is the most wonderful law ever devised in the U.S. national interest. Unless he is satisfied that a respectable legal case has been made to show that setting up the Panama Canal Commission as ordained in the treaty is permissible under the U.S. Constitution, he must reject the legislation proposed by the executive branch. The Constitution comes first.

Well, thank you very much, Mr. Chairman, for the committee's courtesy and fairness in hearing me. I shall now be happy to answer any questions that you, other members of the committee, or the staff might have.

Mr. BONIOR. Thank you, Dr. Breecher. You have left us with a lot to think about. You are obviously a well put together constitutional scholar.

Dr. BREECHER. I have been a member of the American Society of International Law for the last 15 years.

Mr. BONIOR. You have raised some very significant questions in your testimony. I was interested in the letter to Senator Roth from the Department of State, on which you indicate they only answered two of the five issues you raised.

Dr. BREECHER. Right.

Mr. Bonior. Might it be possible that the Senator asked that only certain questions be answered or addressed?

Dr. Breecher. The Senator sent them his statement in the Senate, which I have cited, on April 17 which, in return, quoted me extensively in an address which I gave at Washington and Lee University almost exactly a year ago—at which, by the way, a representative of the Legal Adviser's Office was present, and I gave him a copy of my address.

So the short answer is that the State Department had all five points, put almost as bluntly as I have been putting them just now.

Mr. Bonior. Can you refer——

Mr. Carney. Can the gentleman yield for 1 minute?

Mr. Bonior. Yes.

Mr. Carney. At this time, could we enter Mr. Roth's statements to which Dr. Breecher is referring into the record so we will have it as part of our record?

Mr. Bonior. I see no reason why we could not do that. I assume it is in the Senate record.

Mr. Carney. I would like to have it in these hearings as part of the record.

Mr. Bonior. That is no problem.

Mr. Carney. Thank you, Mr. Chairman.

Mr. Bonior. I am supposed to say there shall be unanimous consent, but there are just the two of us here and there is no problem. [Laughter.]

[The material to which reference is made follows:]

Department of State,
Washington, D.C., May 12, 1978.

Hon. William V. Roth, Jr.,
U.S. Senate, Washington, D.C.

Dear Senator Roth: This is in response to your letter of March 20 forwarding a copy of an address given by Mr. Charles H. Breecher. You have requested that I discuss the "citizenship" issues raised by Mr. Breecher. I regret the delay in responding.

Mr. Breecher notes that under paragraph 3(a) of Article III of the Panama Canal Treaty, four of the nine directors of the Panama Canal Commission are to be Panamanian nationals. Mr. Breecher questions whether this provision constitutes an impermissable limitation on the power of the President, with the advice and consent of the Senate, to appoint officers of the United States. It is clear that, in creating federal offices, Congress may prescribe qualifications which necessarily limit the scope of the President's appointment power. A common example is the limitation of the number of appointees to an independent regulatory agency who may be members of the same political party. Another illustration are statutes which require that directors of government corporations be drawn from designated interest groups. (eg. 22 U.S.C. 2193, OPIC). There is no basis for distinguishing between restrictions on the appointment power which have been imposed by statute from those imposed by Treaty. Both are equally permissable under Article II Section 2, Clause 2 of the Constitution.

Contrary to Mr. Breecher's implication, neither the Constitution nor applicable law precludes the employment of aliens by a United States Government agency. There are restrictions in the Civil Service Regulations concerning the employment of aliens in the competitive service, but these would have no application to the directors, deputy administrator or other employees of the Panama Canal Commission. It should be noted that the present Panama Canal Company employs a large number of Panamanian nationals. In the unlikely event that impeachment proceedings are initiated against an official of the Commission, the governing standard with regard to the crime of treason would differ if the official were a Panamanian national. This poses no constitutional obstacle to the Treaty, however.

Mr. Breecher further contends that limitation of four of the nine director positions and one of the two executive positions to Panamanian nationals, and the system of hiring preference for Panamanian nationals may deprive United States citizens of rights under the 5th and 14th Amendments to the Constitution. The 14th Amendment applies only to the states. Even if we assume that the right to employment as a director, executive or other employee of the Commission is a right protected under the 5th Amendment, the reservation of certain positions in an organization by Treaty to nationals of the other contracting state does not constitute an un-Constitutional deprivation of such a "right". The federal government may employ classifications based on nationality so long as such action serves to enhance federal interests substantially. *Mow Sun Wong* vs. *Hampton* 435 F. Supp 37, 44 (N.D. Cal. 1977) applying *Hampton* vs. *Mow Sun Wong* 426 US 88 (1976). There is no doubt that federal interests in foreign relations are advanced materially by these Treaty Provisions. The Treaty is thus not subject to attack under the 5th Amendment, even if we make the unlikely assumption that a protected right is involved.

Mr. Breecher questions the ability of the United States to control the Commission in view of the minority Panamanian representation. One of the principle objectives of the U.S. negotiators was to insure that the Canal would remain under U.S. control until the year 2000. Thus, the Treaty provides that the Commission will be a United States Agency constituted under United States law, and assures the United States of majority control of its Board. Steps will be taken to insure that the United States directors implement United States policy.

Finally, Mr. Breecher fears the prospect of litigation which would result in a declaration that the Panama Canal Treaty is unconstitutional. Although such litigation may be commenced, neither the "citizenship issues" on which you requested comment, nor any of the other issues raised by Mr. Breecher provide a basis for a well-founded constitutional challenge to the Treaty.

I hope these views are helpful to you. Again, I apologize for the delayed nature of my response.

With best regards,
Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for
Congressional Relations.

Mr. BONIOR. Can you refer the committee to any case in which a treaty has been held unconstitutional because it limited the appointment power of the President?

Dr. BREECHER. No, Mr. Chairman, but since a treaty cannot deal with the appointment power of the President at all, that is not surprising. Only legislation can deal with the appointment power of the President.

Mr. BONIOR. The memo that the State Department wrote points out a couple of things that you refute in your testimony, such as the *Mow Sun Wong* case, on which they seem to rest their argument to a large degree.

With respect to the question of classifications of appointments, they raise the point that we have classification of appointment by political party and by interest groups—the Federal Trade Commission, for instance, to oversee investment—and that this is nothing unusual and nothing new. How do you react to that?

Dr. BREECHER. Well, I challenge this, Mr. Chairman, with what a jurist would call impertinent testimony. This has nothing whatever to do with two questions. First, limiting where the President still has a choice—3 out of 7, or even 1 out of 3—is quite different from limiting him to where there is no choice at all but to appoint.

Second, all these classifications have to do with classifications where U.S. citizenship is required, as against being a permanent resident alien. None of these classifications has anything to do with nonresident aliens and with U.S. civil officers.

The U.S. Government can employ nonresident aliens, but it has nothing to do with appointment of U.S. civil officers. There is no case in American law where a nonresident alien has ever been appointed a U.S. civil officer.

Mr. Bonior. Do you agree that the United States has the power to transfer the Canal to Panama?

Dr. Breecher. Sure. Could I comment on that, Mr. Chairman?

Mr. Bonior. Well, let me finish the question and then you can put it altogether. Does this not include the power to provide a phased transfer with minority Panamanian participation?

Dr. Breecher. No; it does not include the power to provide what they call a phased transfer. You can transfer title only once; you cannot transfer it in phases. It particularly does not include the power to set up a U.S. Government agency which then executes this transfer.

Let me give you a practical example. The U.S. Congress certainly has the power to transfer this building, or the Rayburn Building, or other Government buildings, over to somebody else—let us say, to Panama. I wonder what you would say, Mr. Chairman, if the U.S. Congress then tried to say that we do not transfer the title to this building, but we transfer to a U.S. Government agency, with Panamanians on it, the right to administer this building, to decide who gets a hearing room, who gets an office, and who gets telephones.

You cannot transfer the responsibilities of the U.S. Government to foreign nationals. You can transfer a piece of property, but you cannot set up an organism which exercises U.S. Government responsibilities with U.S. aliens on it.

Mr. Bonior. And you are basing that on your constitutional argument?

Dr. Breecher. Yes. Of course, there is no case in the world, except in protectorates or in the unfortunate country of Poland, where this type of thing ever happens. If the United States has bases overseas, of course the whole base can be transferred.

Mr. Bonior. Do you see any similarities between protectorates and the situation that we are involved with here?

Dr. Breecher. Yes; with the United States being the protectorate power, not the Panamanians, with the United States being in the position of Poland which I mentioned, where nonresident aliens are given U.S. governmental powers.

Mr. Bonior. Mr. Carney?

Mr. Carney. Thank you, Mr. Chairman. I would like to, Dr. Breecher, at this time express Congressman Evans appreciation for your coming here. Unfortunately, Congressman Evans is in a markup session in the Banking Committee and he had to leave. He asked me to apologize for him and to thank you for the fine statement and the fact that you brought many constitutional questions to light for this committee.

I, of course, have that same sentiment. I appreciate your coming here today, and you have enlightened me quite a bit. I think your statement is quite comprehensive, and that is probably why I am limited in questions; you have answered an awful lot of questions that I had.

But I would like you to—and I know you did it in your conclusion; you mentioned it throughout your statement and in your conclusion—the difference between total rejection by the House of implementing legislation and implementing some sort of legislation with the idea of taking the lesser of two evils—could you explain to me more definitely the difference between those two approaches?

Dr. **Breecher**. Well, Mr. Carney, if the Congress passes some implementing legislation which is constitutional and which stands up before the U.S. courts and U.S. law—you pass legislation on this particular point, for instance, that says all nine members of the Panama Canal Commission will be American citizens—it is a breach of the treaty.

As a breach of the treaty, it gives the Panamanians the right to either—this has to be raised, of course, and then it is subject to diplomatic negotiations. It looks to me as if it gives the Panamanians the right to either say, "You are breaching the treaty; it is no longer binding on us," or to say "We want damages for this particular breach."

It does not, however, give the United States the right to attack the treaty as being invalid, for whatever reason, not only because of this one, but because there are a number of issues in international law on which the United States could attack this treaty as being invalid.

What I am trying to say is that the U.S. Government cannot have it both ways. They cannot, on the one hand, say, "We stand by the treaty and we pass implementing legislation," and then say, "We are attacking the whole treaty." If they pass implementing legislation and if that is constitutional, that is it, as far as U.S. law is concerned, and they cannot then attack the validity of the whole treaty, because they have confirmed it by trying to make it conform with the U.S. Constitution. They may leave themselves open to Panamanian attack, of course.

Mr. **Carney**. What would your opinion be if no implementing legislation were passed? What course of action could be taken then?

Dr. **Breecher**. Well, the Justice Department said that this was so difficult, they could not reply to it, if you remember their written statement. But I will attempt to reply to it as succinctly as possible. In U.S. law, nothing happens. Whatever we have in the 1903 treaty remains in effect. In international law, the Panamanians can make a case, and the case is based on there being such a thing as the 1969 Vienna Convention on Treaties, which is supposed to be declaratory of customary international law.

The United States has not ratified this particular convention. Nevertheless, our executive branch would consider itself bound by it. Now, article 27 of that particular convention says that a government cannot invoke the provisions of its internal law in justification not to perform under a treaty.

However, it would be a very great question if there has been a meeting of the minds and if the United States actually intended to conclude a treaty which was unconstitutional which they could not implement.

But then I would like to go on to say that the treaty is subject to attack on a great many counts in international law. I will give you two; one is that you may remember that the Panamanian President at the beginning of the debate told the Senate that the treaty had to be passed as is—do you remember that—because if the treaty were amended in any way, there would have to be a new constitutional referendum in Panama.

Well, the treaty was amended in many ways by the Senate ratification provisions, and the Panamanian Government just passed over it. But from what the U.S. President has told us about Panamanian law, the treaty is not valid, because it has not been ratified by referendum. So in that case, it is a clear attack which the United States would have to make through the executive branch.

Now, let me give you another one, and this may come as a great surprise to Senator DeConcini. The method of ratification of a treaty is really a very, very simple matter; it is just like a contract. The only thing that is necessary is that there be a complete meeting of the minds, evidenced in a written agreement.

If I say I will sell you this watch for $100 and if you say, "Fine, and here is the $100," it is finished. If, however, you say, "That is OK, I will take it; I will give you $50 now and I will give you $50 in a week," that is just a counteroffer; there is no agreement.

If somebody went to the trouble to look at the instruments of ratification which have been exchanged in June of 1978, they will find that, quite properly, the United States put forth all the amendments, or whatever you call them—reservations and conditions; all of these are amendments and it does not matter what you call them.

The Panamanians, quite properly, repeated them in Torrijos letter. But then you will find that for both treaties, the Panamanians added something, and what they added in very clever language—it is the State Department bulletin of July 1978—in very clever language, what they added nullified the DeConcini reservation, which said that under certain conditions, the United States could use force in Panama to keep the canal open without the consent of the Panamanian Government.

The way the Panamanians did this was to say that the Panamanians assume that both the United States and Panama stick by the provisions of certain articles—I think it is 18 and 20—of the treaty with the Organization of American States. These articles prohibit any use of force, except in self-defense.

So this was a very clever and well camouflaged, like so many things in this treaty and in this legislation—as an old bureaucrat, I can spot them—a very clever way of nullifying the DeConcini reservation. However, it has the fatal flaw that the Panamanian acceptance put new conditions in there to which the United States has never replied.

Now, as long as the U.S. Government—and only the President can do this—does not raise this, nothing happens. What I am saying is that the Panamanians would have a heck of a time insisting that in the absence of implementing legislation and the United States declaring it is unconstitutional on its own, under international law the treaty is valid.

But there are a host of other things which I could mention if I were trying to attack the treaty under international law. One is the threat of force. Just as the chairman mentioned, one thinks of Panama as the protectorate and the United States as the governing power, but it is really the other way around.

It was the Panamanians, you will remember, who threatened force if the treaty was not ratified. The Government of Panama said they would riot; that is a use of force. That, in international law—I think it is article 52—makes the treaty completely invalid.

I would argue, of course, that the whole provision in there for Panamanians to become civil officers of the United States is contrary to a preemptory rule of international law. A preemptory rule of international law is defined as one to which all nations apply, or which is considered as such, and which cannot be excluded by a treaty agreement of the parties.

Incidentally, on this OAS treaty, it has to be kept in mind that the OAS treaty, like any other treaty, can be amended between two parties by special arrangement, thus the DeConcini reservation would apply.

I am only saying that what Mr. Foy says, that you cannot predict the legal consequences and that the treaty goes into effect regardless of what happens, is only very, very partially right, and can become right only if the U.S. Government—that is, the executive branch—does not raise any evident points in international law. But all you have then is a dispute between Panama and you do not have anything that is legally binding. You have a diplomatic dispute between Panama and the United States.

Mr. CARNEY. One last question; I am sure you are getting tired at this point.

Dr. BREECHER. No, Mr. Carney. I said before that for me, this is a constitutional issue; it is not the Panama Canal, you know. If the Congress wants to give the Panama Canal away, that is fine with me; that is their right and their privilege.

Mr. BONIOR. You said it was fine with you?

Dr. BREECHER. Well, I do not think it is a good treaty, or a good thing to do. But this is your sovereign and your right under the Constitution, and it is not an emotional issue with me. But the U.S. Constitution is a very emotional issue; I have sworn too often to support it, particularly as a naturalized citizen. As a naturalized citizen, you have to swear to support the Constitution of the United States.

Mr. CARNEY. I would just like to ask you one more question.

Dr. BREECHER. You can ask as many questions as you want, as long as the chairman will permit it, and I will be happy to answer them.

Mr. CARNEY. It pertains to the Constitution, and that is that you said before that if any Member of the U.S. Congress or the House of Representatives has any doubt about the constitutionality of this treaty, he is compelled to vote against it, is that right?

Dr. BREECHER. No; no, I did not say that. I said you can have all the doubts you want, but if there is no reasonable doubt in any Member's mind that this is unconstitutional, then he is obligated to vote against it. You can vote for a treaty and say, well, it is a close question; it might be constitutional and it might not be; one lawyer says this and another lawyer says that.

But if you come to the conclusion that one side has no case at all or that there is no case, then, under your oath of office—there is nothing anybody can do to you, of course; they cannot impeach.

Mr. BONIOR. I was hoping they could do something. [Laughter.]

Dr. BREECHER. It is only the President and the voters who can do anything to you. It is quite different for the President, I must say, if he deliberately—and I am quite sure that he does not, you know—there, of course, is impeachment. It is quite different for a Government official; it is quite different for Government officials, not an elected member, because he is bound by his oath to support the Constitution as well, but if he has no case in his own mind, he may not do so, or he could be impeached.

Mr. CARNEY. To get back to Mr. Foy, I asked Mr. Foy if he could determine for me the difference between a binational organization in the treaty and a Government agency, a U.S. Government agency, as this will be. Could you give me a definition of the two?

Dr. BREECHER. Binational commissions are border commissions, usually, usually with an equal number of members. Obviously, they are never U.S. Government agencies. Obviously, in a binational commission, the United States appoints its members and the other government appoints their members. The Commission as a whole then exercises what the United States and other governments have; nowhere does the U.S. President appoint the members of the foreign members; nowhere does the Congress set up their offices by law, and any authority these people have comes only from their own government; never does the authority of the foreign members come from the U.S. Government. I hope that answers it.

Mr. CARNEY. Thank you. It does.

Dr. BREECHER. Nobody has ever said that this was a binational commission, of course. The treaty says a U.S. Government agency.

Mr. CARNEY. That is my next question.

Dr. BREECHER. The legislation says this by referring to the treaty, which is a very clever way—and, of course, one of those things—a very clever way to not draw the attention of the Congress to it, when it says that President can remove all of these people subject to the provisions of the treaty. So, unless you also have a treaty in front of you, you do not know what the heck this says.

Mr. CARNEY. So you have no doubt that this is a U.S. agency?

Dr. BREECHER. The wording—it is not that I have any doubt; I have no doubt that this is the wording. It does not matter what I say, Mr. Carney; it is how I can prove it. It does not matter what anybody says, or any lawyer says, but how does he prove it.

Mr. CARNEY. Right. My next question is, then, can you recollect any—I guess you could call this a hybrid type of agency we have here, because I can never recollect an agency of the United States that had anybody but U.S. citizens on it, can you?

Dr. BREECHER. No. And I must say that anybody who is affected by a rule or by paying some money because of such a type of agency would be a bloody fool if he did not immediately sue for a refund.

Mr. CARNEY. I thank you very much; it certainly was enlightening, and I appreciate your coming down and giving us this testimony. Thank you, Mr. Chairman.

Mr. BONIOR. I just have one other question, and then I would like to turn to counsel. I know we have other witnesses, and I will try to expedite this as quickly as possible.

As a constitutional historian——

Dr. BREECHER. Let us say as a jurist; I do not teach law.

Mr. BONIOR. In your studies of the history of the Panama Canal situation, did the United States violate at the turn of the last century, early part of this century any constitutional provisions in Colombia and in Panama? Have you read McCullogh's book, and things of this nature? What I am trying to get at is that you make the case here, and you do it with, indeed, some diligence—I am trying to understand the history in terms of how this country in the 1890's and the early part of this century may have, indeed, violated the constitutional prerogatives of other nations, Colombia and Panama.

Dr. BREECHER. Mr. Chairman, I must confess that I have never addressed myself to this question. The United States is not bound by the constitution of Panama or Colombia, or any others. It would be somewhat curious if we, for instance, could not insist in the SALT treaty on verification because that violates the constitution of the Soviet Union.

I have cited to you this article XXVII. I will work it the other way around; that another country cannot invoke its own laws or constitution to get out of the performance of a treaty. So the only violations that could be—and I must say I do not really—I might recall some—it could be of treaties that the United States was a party to. The United States is not bound to serve the Colombian or Panamanian constitution, or what have you.

Mr. BONIOR. OK.

Mr. MODGLIN. I will be brief, Mr. Chairman, because I know we have to get to the next witness. Just two questions, and one clarification.

Mr. Breecher, you indicated that you know of no case in which a nonresident alien was a civil officer of the United States. In his colloquy with the Department of Justice, Chairman Hubbard had brought out that one of the first Supreme Court Justices in the Canal Zone was a Panamanian, who was also a justice of the Supreme Court of Panama. This may have been because the civil code of Panama applied in the Canal Zone for quite a few years, from 1904 to 1934.

Dr. BREECHER. Could I comment on that?

Mr. MODGLIN. How do you react to that?

Dr. BREECHER. Was he a resident of the Canal Zone?

Mr. MODGLIN. That is unclear from the material, but probably he was a resident of Panama.

Dr. BREECHER. Then, as such, he is in a somewhat different category, as long as we have a Canal Zone where the U.S. exercises sovereign rights.

Mr. MODGLIN. A clarification with respect to your testimony: The point that you were making is not—with respect to the composition of the Panama Canal Commission—not that the treaty provision is unconstitutional, but the implementing legislation is unconstitutional, because the Commission itself cannot be constituted by a treaty. So therefore, in terms of U.S. domestic law, we have no Commission by the treaty alone and since, it is the implementing legislation that establishes the Commission, it is the terms of the implementing legislation which are either constitutional or unconstitutional.

Dr. BREECHER. That is correct. A treaty could, for instance, be read to say that the U.S. President undertakes to have the U.S. Constitution changed or amended.

Mr. MODGLIN. Now, of the five points that you raised, you indicate that H.R. 111 solves two out of those five problems. So I have two questions. Could the language of the implementing legislation solve all five of the problems, and if it did, in your opinion, would it be inconsistent with the treaty? As long as the United States lived up to its treaty obligations with Panama, would it not be possible to have language in the implementing legislation that is consistent with the Constitution and yet despite inconsistencies with the Treaty, at the same time live up to our treaty obligations with Panama?

Dr. BREECHER. The answer is no, you cannot, under the treaty. The only way I can see to make the Panama Canal Commission constitutional is that all nine members should be U.S. citizens. You cannot do this without violating the treaty. If a new treaty is written which says that all nine members will be U.S. members, that is fine.

Mr. MODGLIN. In the event that it were constitutional for a nonresident alien to be a civil officer of the United States—and I know that you do not concede that——

Dr. BREECHER. Well, neither does the Department of Justice.

Mr. MODGLIN. Could not the legislation cure the other—that is correct—could not the implementing legislation cure the other three defects?

Dr. BREECHER. The answer is no, you could not cure the defects. Obviously, you would have to have the members appointed in accordance with the Supreme Court decision in *Buckley* v. *Valeo*, where the President has a choice. You obviously would have to give the President full removal power, or you are trying to overrule Madison versus the United States.

Mr. MODGLIN. If the implementing legislation gives the President a choice, regardless of what the treaty says, is not the implementing legislation constitutional?

Dr. BREECHER. Sure, but it violates the treaty. Therefore, it sets a very serious consequence that, on the one hand, you want to carry out the treaty so you cannot attack the treaty; and, on the other hand, under the terms of the treaty, the United States cannot exercise any rights, except through the Panama Canal Commission, as constituted by the treaty. It is an impasse.

Mr. TANNENBAUM. I was going to raise the same question that Mr. Modglin just did. As you know, Congressman Murphy in 1977 did point out that these treaties were defective in many ways. Yet, the Senate did give its advice and consent to the treaties, and the President signed the treaties. Some of the reservations, understandings, and amendments addressed the issues that were raised.

However, as you point out, we do have an internationally binding agreement.

Dr. BREECHER. Oh, no.

Mr. TANNENBAUM. Well, to the extent that it is self-executing.

Dr. BREECHER. No, sir, I did not say that. I said, first of all, to the extent that it is self-executing; second, that it has not been ratified yet. Until the 31st of March, I think the President is obligated under the Constitution to withdraw it; the Senate can, by a two-thirds majority, amend the ratification. I said, afterwards, this international agreement is subject to attacks on so many grounds that you do not even have to argue that it is unconstitutional; that the United States never intended to make an agreement which it could not implement under its Constitution. That is what I said.

Mr. TANNENBAUM. You pointed out that it can be attacked by both parties.

Dr. BREECHER. But the United States has an international law; it has a rather strong case. They have not exchanged identical ratification instruments, for instance.

Mr. TANNENBAUM. The point that Mr. Modglin was trying to make and which I would like you to address is, there are methods, such as was done in H.R. 111, of correcting some of these constitutional defects, like the property disposal question, which would be one item, and the Senate confirmation requirement.

Now, do you not think it is possible to address these issues and try to come up with some implementing legislation that would be satisfactory from the constitutional standpoint, or do you feel that these treaties are absolutely constitutionally defective?

Dr. BREECHER. Constitutionally, of course; all you have to do is say, instead of five members—Chairman Murphy says "all nine members shall be," and then the legislation is constitutional. But then you breach the treaty.

Mr. TANNENBAUM. But you do not believe that there is a method of complying with both these problems?

Dr. BREECHER. No, sir. I can only give you my opinion; impossible.

Mr. TANNENBAUM. Unless you are wrong on a couple of these legal points.

Dr. BREECHER. Unless I am wrong, but then I respectfully request that I be shown where I am wrong.

Mr. TANNENBAUM. I do not necessarily disagree with your conclusions. However, on the issue of Presidential choice that you point out, is there not Presidential choice here when he can appoint five of the nine members?

Dr. BREECHER. Of course. What is his choice on the four Panamanians? I have not said that he does not have choice for the five. But I am only saying that for the four Panamanians, there is no choice at all. There is a ministerial function to appoint them in a timely manner.

Mr. TANNENBAUM. The question is, would the choice be addressed to each individual member, as distinguished from the overall.

Dr. BREECHER. Well, one member of the Senate Judiciary Committee wrote me that the Panamanians would submit a list of seven and the President would pick four. I wrote him back and said, "Look, first of all, this is not in the treaty; the treaty says the exact contrary." For instance, when there is a replacement, one Panamanian is removed by Panamanian request. One Panamanian person remains, and the United States has to appoint that one in a timely manner.

Mr. TANNENBAUM. For instance, what if the legislation provided that—of course, the President appoints the five U.S. members, and actually appoints the Panamanians, which are referred to him for appointment. But what if the five U.S. members were to vote in block? Would you think something like that would correct that defect?

Dr. BREECHER. First of all, I would like to know how you could force the five members to vote in block under the terms of the treaty. But suppose they do, and suppose they do not. Suppose one of them votes differently. In any case, the treaty says that all these nine members are equal. If the Panamanians want to raise it, it is one thing. If you then try to introduce legislation which makes the Panamanians second-class directors, this is very convenient from the U.S. point of view. It is fine, but it is not what the treaty says; it is an outright breach of the treaty. They only become important if somebody raises them.

Mr. TANNENBAUM. You do raise some very important legal issues; frankly, some of them have been bothering us for quite a while. I just would like to address the possibility of solving some of these things, and you obviously feel there is no solution here without doing violence to the treaty or to the Constitution.

Dr. BREECHER. Yes; I am sorry. It is a flat statement, and I have some very special reasons to say this. I once participated in an exercise at the State Department many years ago where we addressed that same question. I played Sol Linowitz when a similar thing was brought up then. So I was very curious to see how they had solved this, and I found they had not solved it.

Mr. TANNENBAUM. Thank you.

Mr. BONIOR. I have been advised that the train that went by here was the locomotive that is in New Jersey that is going back to Panama. [Laughter.]

Dr. BREECHER. Mr. Chairman, you are not from New Jersey, but let me tell you that under the treaty, it provides for how much you are going to pay for heating oil; it might be considerably affected by freight rates. It is not just the Panamanian freight rates, because the Panamanian freight they are shipping through are also very important in determining the rail freight rates.

Mr. BONIOR. Mr. Carney had one more question.

Mr. CARNEY. I just want to clarify one thing. You mentioned article 52 of international law which had to do with the threat of violence in treaties. Is that from the Vienna Conference of 1969?

Dr. BREECHER. It is from the Vienna Convention. If you want me to quote it to you——

Mr. CARNEY. I think we can look it up.

Dr. BREECHER. "A treaty is void if its conclusion has been procured by the threat or use of force, in violation of the principle of international law embodied in the charter of the United Nations." Now, you cannot use force, of course, under the Charter of the United Nations, except in self-defense.

Mr. CARNEY. So you conclude we are skating on thin ice?

Dr. BREECHER. Oh, no, Mr. Carney, I am not saying you are; the House of Representatives does not have responsibility on this, unless it passed this type of legislation. As a matter of fact, the Senate protected you by the Brooke reservation; you maintain the right to vote on the implementing legislation.

Mr. CARNEY. Thank you very much.

Mr. **Bonior**. Thank you, Dr. Breecher.

[The following was received for the record.]

Prepared Statement of Charles H. Breecher

Mr. Chairman, I greatly appreciate this opportunity and privilege to testify before this Committee. My testimony concerns one point only, but a point of fundamental importance: that the proposed legislation, which attempts to set up the Panama Canal Commission, a United States Government Agency, in accordance with the provisions of the Panama Canal Treaty of 1977, is in conflict with the provisions of the U.S. Constitution. The legislation introduced by the Executive Branch is unconstitutional beyond any reasonable doubt.

Unconstitutional beyond any reasonable doubt is a very strong and most unusual statement. To show that these are not the rantings of some ultra-right crackpot indulging in legal fantasies, I would ask the Committee's consent that my bio-data be made part of the record. Briefly, I am a former Government official, very familiar with Treaty negotiations from my long service with the Department of State, hold various degrees in law and economics, and am a long-term member of the American Society of International Law. While I do not wish to conceal that I have criticized the Panama Canal Treaty on various financial and military aspects also, these are not relevant to my testimony. The Panama Canal is not an emotional issue with me. But the U.S. Constitution is, the same as with the vast majority of Americans.

Mr. Chairman, showing that the setting up of the Panama Canal Commission as ordained in the Treaty is unconstitutional is not one of those difficult and controversial legal matters on which scholars, lawyers and Supreme Court Justices might disagree. I have yet to hear one respectable legal argument in rebuttal, after many months of discussions and correspondence with knowledgeable jurists. It is a simple, straightforward issue, even though hitherto not fully debated.

The Panama Canal Commission is a United States Government Agency. Accordingly, all its nine members including the four Panamanian nationals, are civil officers of the United States. But does the U.S. Constitution alone of all Constitutions on earth, permit non-resident foreign nationals to become civil officers of the United States? Does the U.S. Constitution allow the Congress to create certain offices under the United States and then exclude all 220 Million American citizens from these offices? Does our Constitution allow a foreign Government to have control over the appointment and removal of U.S. civil officers? The answer which I believe the average citizen would give without hesitation, must be no on all points. I will now show in detail that the U.S. Constitution, as interpreted by Supreme Court decisions, precludes these unprecedented provisions of the Panama Canal Treaty of 1977 to be implemented by U.S. legislation.

Here, for convenience, is the text of Art. III, par 3 of the Panama Canal Treaty of 1977:

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the Laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such a request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

Enacted into law, these provisions would give a foreign Government de facto control over an important U.S. Government Agency. If they can be enacted by the Congress under the U.S. Constitution, this would mean that the President and the Congress, backed up by a two-thirds vote in the Senate, have the power to place the American people under foreign domination, with all non-elected executive and judicial officers of the U.S. Government being non-resident aliens owing loyalty to their Governments rather than to the United States. This is a startling and indeed preposterous thesis of the extent of Presidential and Congressional power which has never been seriously advocated even by those who believe in One-World Government. It makes no difference in law that of course the President and the Congress would never use this pernicious power, even if the Constitution should grant it. The Constitution does not grant it!

To make even clearer the principle involved, it might as well be stipulated in SALT III that one half of the U.S. Assistant Secretaries of Defense, say all those having any jurisdiction over U.S. overseas bases and troops, shall be Soviet Nationals, proposed and removed by the Soviet Union at its discretion, with the U.S. President obliged by law to accede to such Soviets requests. From a U.S. constitutional point of view, that's exactly the same principle as expressed in the proposed make-up of the Panama Canal Commission.

And here is the language of the implementing legislation consistent with the Treaty (Sec. 205, draft legislation dated 3 March 1978): "(a) A board of directors shall manage the affairs of the Panama Canal Commission. The President of the United States shall appoint the members of the board in accordance with paragraph 3 of Article III of the Panama Canal Treaty of 1977, and neither this chapter nor any other law prevents the appointment and service as a director, or as an officer of the Commission, of an officer or employee of the United States, or of a person who is not a national of the United States. Each director so appointed shall, subject to paragraph 3 of Article III of the Panama Canal Treaty of 1977, hold office at the pleasure of the President, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office".

If the foregoing provisions of the Panama Canal Treaty of 1977 are enacted as U.S. law, this would purport to do the following:

1. Limit the President's appointive power to a ministerial function, giving him no choice whatever but to appoint nominees of the Panamanian Government in a timely manner, and
2. Limit the President's power of removal to a ministerial function, where he must remove at the request of the Panamanian Government and may not remove without the consent of that Government, and
3. Eliminate the right of the Senate to give advice and consent to Presidential appointments of other than "inferior officers", and
4. Enable non-resident aliens, who appear ipso facto immune from impeachment proceedings, to become civil officers of the United States, and
5. Exclude persons subject to the jurisdiction of the United States from appointment as civil officers of the United States because they are not Panamanian citizens, but either U.S. citizens or U.S. residents not owing allegiance to countries other than the U.S.

However, it appears that any (and all) of these unprecedented propositions is unequivocally ruled out by the U.S. Constitution, to wit:

Re Issue 1: What limits can be placed on the appointive power of the President?

It has been a generally accepted rule of American constitutional law that the power to appoint must include not only the right to name, but at least some limited right of selection. A case cited in legal textbooks is *People* v. *Mosher* 163 N.Y. 32. The Supreme Court of New York State held that under the State Constitution the Civil Service law saying that the veteran highest on the list had to be appointed was unconstitutional.

While the President's power to appoint civil officers of the United States can be limited by law in many ways, the Supreme Court ruled in *Buckley* v. *Valeo* (424 U.S. 1 (1976)) that it cannot be usurped by any other Agency. Just how far this Presidential power can be narrowed by law is unsettled, except that "the qualifications may not so limit selection and so entrench upon Executive choice as to be in effect legislative designation." (Chief Justice Taft in *Myers* v. *United States,* 272 U.S. 52 (1926)).

A recent Congressional Research Service, Library of Congress, Report signed by Martin Rosenblatt, Legislative Attorney, 30 January 1978, concludes: Some choice, however small, must be left to the appointing authority. That's the same rule as in *People* v. *Mosher,* cited above. The CRS Report can be found in the Congressional Record. Senate, S5660–61, 17 April 1978.

It is interesting and illuminating that this CRS Memo was written in defense of the constitutionality of a provision in Chapter 38 of S1437, the Criminal Code Reform Act. Originally this Chapter provided that three of the seven members of the U.S. Sentencing Commission would be appointed by the Judicial Conference of the United States. This was objected to in the Senate as unconstitutional, in view of

Buckley v. *Valeo.* The provision was then amended that the President would select three of seven members proposed to him by the Judicial Conference. Objections were raised that this still limited the President's appointive power too much, and it was in defense of the amended clause that the CRS memo of 30 January 1978 was written.

It thus appears that the CRS would be satisfied if the President could select three from seven nominees by another agency, or perhaps one from two nominees. It can't be said with assurance that the Supreme Court would go as far as the CRS in allowing the Congress to limit Presidential appointive power. But surely the Court would go no further then the CRS, thus leaving the President with a choice, however limited, because that would mean overruling *Buckley* v. *Valeo.* However, under the Panama Canal Treaty of 1977, the President would have no choice whatever, but would have to appoint the Panamanian nominee or nominees in a timely manner. This effectively puts the power of appointment in the Panamanian Government, and is therefore clearly in conflict with the U.S. Constitution.

It would seem appropriate at this point to deal briefly with the relationship of the provisions of the Treaty to the U.S. Constitution and to United States legislation.

The Panama Canal Treaties, to the extent that the provisions are not self-executing impose an obligation, under international law, on the President to cause to be proposed implementing legislation to the Congress pursuant to the Treaties. As concerns the Panama Canal Commission, a crucial part of the Panama Canal Treaty of 1977, the Treaty is not self-executing, as indeed the language of Art. III states: "called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States" . . .

The foregoing Treaty language, while unobjectionable, is surplusage, because as a United States Government Agency, the Panama Canal Commission can be created by law only. Further, a Treaty has no bearing on the constitutionality of subsequent U.S. legislation pursuant to the Treaty, because a Treaty cannot amend the Constitution of the United States.

The Supreme Court has laid to rest any unfounded doubts on this matter, which were caused in part by a dictum of Justice Holmes in 1920 in *Missouri* v. *Holland,* 252 U.S. 416, a case involving migratory birds, and also by discussions referring to the so-called Bricker amendment in the 1950s. In *Reid* v. *Covert,* 354 U.S. 1 (1957), Justice Hugo Black, delivering the opinion of the Court, after quoting Art. VI of the Constitution (Supremacy Clause) said:

"There is nothing in this language which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution . . . . It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Art. VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Art. V."

In Conclusion, since the President must under the implementing legislation appoint the nominees or nominee of the Panamanian Government in a timely manner, this provision violates Art. II of the U.S. Constitution. It is irrelevant what the Treaty says on this point, because a Treaty cannot amend the U.S. Constitution.

Re Issue 2: What limits can be placed on the President's power to remove civil officers?

Except for the limitations on the President's right of removal contained in the Constitution itself (Art. III, Sec. 1 re: judicial appointments), the President's right of removal seems to be closely linked to his power of appointment. It may seem superfluous to consider here at length what limitations on the Presidential removal power the Congress might impose by law, because the Treaty provisions require that the President should not have any removal powers at all with regard to the Panamanian members of the Canal Commission. The President, according to the Treaty and the implementing legislation, cannot remove Panamanians except with the consent of the Republic of Panama, and must remove them at Panamanian request. Accordingly, the power of the President to remove would be usurped by the Panamanian Government. The Treaty Summary prepared by the Department of State underlines that removal at the initiative of the United States can take place only "after obtaining the concurrence of the Panamanian Government."

While the removal power is not specifically mentioned in the U.S. Constitution, it has been adjudicated by the Supreme Court in *Myers* v. *United States,* 272 U.S. 52 (1926), *Humphrey's Executor* v. *United States,* 225 U.S. 602 (1935), *Wiener* v. *United States,* 357 U.S. 349 (1958), and *Morgan* v. *TVA,* 312 U.S. 701 (1941).

It results from these Supreme Court decisions that under the U.S. Constitution, the power of the President to remove executive officers is absolute and cannot be restricted in any manner. Congress may restrict Presidential removal power only for quasi-judicial or quasi-legislative officers. The implementing legislation gives the President the right of removal, at his discretion, for the U.S. members of the Panama Canal Commission, so it regards the members of that Commission as executive officers.

None of the decisions cited lends any support to the thesis contained in the Panama Canal Treaty of 1977 and in the implementing legislation that the President's removal power may be restricted to the point where he cannot remove for any reason, except with the consent of a foreign Government. Nor can any basis be found in the U.S. Constitution to lodge the removal power de facto in anyone other than the President. U.S. legislation could not for instance provide that the President must remove if so requested by the Senate. How then could a law provide that the President must remove a civil officer of the United States if so requested by the Republic of Panama?

H.R. 111 corrects this particular constitutional defect by providing unrestricted removal power for the President for all members of the Panama Canal Commission. H.R. 111 also provides for Senate advice and consent to appointments, the next constitutional issue raised against H.R. 1716. However, H.R. 111 does not correct the three other constitutional defects mentioned.

Even more important, by correcting certain constitutional defects as is mandatory under the U.S. Constitution for U.S. legislation, H.R. 111 of necessity violates the Panama Canal Treaty of 1977. This has the serious consequence that it vitiates all the rights granted to the U.S. by Panama under the Treaty, because these rights can be exercised by the United States only through the Panama Canal Commission constituted as ordained in the Treaty.

There is no way to square this circle. Unless the Treaty is amended while there is still time, either the U.S. Constitution or the Treaty must be breached by the implementing legislation.

Re Issue 3: Can the Senate's right to give advice and consent to the appointment of the members of the Panama Canal Commission be abridged?

The issue here comes down to whether the members of the Commission are "inferior officers", so that their appointment could be vested in the President alone. (Art. II, Sec. 2, cl. 2 of the U.S. Constitution).

According to testimony before the Senate Foreign Relations Committee, the members of the Panama Canal Commission are at the level of the U.S. Undersecretaries of State and of the Treasury. A Congressional determination that such civil officers are "inferior officers" would therefore seem excluded, if past consistent Congressional practice is any guide.

Further, while the wording of Art. II of the Constituion leaves it to the judgment of the Congress to decide on an adhoc basis which officers are "inferior officers", such judgment must be exercised with some consistency. It further appears from the text of Art. II that those who might themselves be authorized by law to appoint "inferior officers", such as the heads of Departments, are not "inferior officers".

The Panama Canal Commission is an independent U.S. Government Agency. Its decisions are not subject to Presidential approval, nor are the transit rates which it sets. Its powers are more extensive than for instance those of the CAB or ICC, and its members appear to be at a higher level, that of Undersecretaries of State. (See page 430, Hearings before the Committee on Foreign Relations, United States Senate, 95th Congress, September 26–30, 1977, Part. I) There is no precedent of any kind to consider civil officers of the rank and authority as described as "inferior officers" and to exempt them from Senate confirmation.

If members of the Panama Canal Commission are "inferior officers", then all civil officers of the United States are "inferior officers", if non-elected. This cannot be the meaning of Art. II. Conclusion: While the term "inferior officers" for purposes of Art. II has not been judicially defined, given the authority and level of the members of the Panama Canal Commission, an independent U.S. Government Agency, and the consistent practice of the U.S. Congress, the members of the Commission cannot, by law, be exempted from Senate confirmation.

Re Issue 4: Can a non-resident alien be made a civil officer of the United States?

The U.S. Constitution prescribes citizenship requirements of varying length for elected officers only (President, Vice-President, Senators, members of the House of Representatives), but is silent on civil officers. Indeed, the U.S. Constitution does not lay down any mandatory qualifications for nonelective public office except indirectly.

The thesis that a non-resident alien owing no allegiance to the Government appointing him, but owning such allegiance to another country, could become an officer of the appointing Government and clothed with a significant part of its authority, is not to my knowledge accepted by any sovereign Government on earth. The makers of the U.S. Constitution, having just emerged from foreign domination, would have been the most unlikely persons to admit that possibility, so one should not be surprised that they did not rule it out explicitly.

However, there are two provisions of the U.S. Constitution which implicitly rule out that non-resident aliens could become civil officers of the U.S. Government.

First, Art. II, Section 4 says that . . . all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

How could a non-resident alien commit treason, as defined in the U.S. Constitution? Further, how could the U.S., which has no jurisdiction over non-resident aliens, impeach and convict them for high crimes and misdemeanors? U.S. laws defining bribery, and other high crimes and misdemeanors do not apply to non-resident aliens, so what standards would be used in impeachment proceedings? How could a non-resident alien be tried at all under the due process clause? It seems evident that the makers of the U.S. Constitution did not admit the possibility that non-resident aliens could become civil officers of the United States, when they wrote the impeachment clause. Nor, to my knowledge, is there any case where a non-resident alien has been made a civil officer of the United States.

Second, Art. VI, Section 3, provides that . . . all executives and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution. . . .

Here also, it is evident that a non-resident alien could not swear such an oath which might bring him in direct conflict with his duties as a citizen of his own country.

The drafters of the implementing legislation seem to be aware of the problem because the implementing draft says that: "Each director . . . shall take an oath faithfully to discharge the duties of his office". That provision can of course not dispense with the constitutionally required oath for all civil officers of the United States. Further, the draft implementing legislation of 3 March 1978 mentions only "foreign nationals" as directors of the Panama Canal Commission notwithstanding any U.S. law, but not non-resident aliens. It may be possible to contend that a resident alien not owing allegiance to any foreign country might become a civil officer of the United States, since he could probably be impeached and could also probably swear the oath required under Art. VI of the United States Constitution. However, the Panamanian directors would be non-resident aliens.

Conclusion: The U.S. Constitution, by implication, does not allow non-resident aliens owing allegiance to a foreign country and subject to its jurisdiction, to become civil officers of the United States, as the implementing legislation would ordain.

Re Issue 5: Can foreign nationality be made a mandatory qualification to hold an office under the United States, thereby excluding U.S. citizens from holding the office because of their U.S. citizenship?

If foreign citizenship is made by law a mandatory qualification to hold a U.S. office, this means that U.S. citizenship becomes an absolute bar for holding this office. This type of provision is unprecedented everywhere, and appears to be repugnant to the U.S. Constitution. Specifically, it appears to be ruled out as a violation of the privileges and immunities of the citizens of the United States which are mentioned in the Constitution (14th Amendment, Sec. 1)

The courts have been reluctant to decide cases on the basis of the Privileges and Immunities clause of the Constitution, resorting instead to some other clause, such as the due process or commerce clauses. However, in the Slaughter House Cases (16 Wallace U.S. 36, 1873) Justice Miller, delivering the opinion of the Court, specifically included the right not to be excluded from public office because of citizenship among the privileges and immunities of United States citizens guaranteed by the Constitution, saying:

"But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded (i.e. property rights), we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws.

One of these is well described in the case of *Crandall* v. *Nevada*, 6 Wallace 24 (1868). It is said to be the right of the citizens of this great country, protected by the implied guarantees of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions . . ."

In the same 1873 case, Justice Field said that the privileges and immunities of U.S. citizens are those which of right belong to the citizens of all free Governments, without other restraints as equally affects all persons. This dictum does not define the privileges and immunities of U.S. citizens. However, it expresses the principle which has never been questioned to my knowledge, that whatever rights U.S. citizens may possess as citizens, such as the right to vote or to share the offices of the U.S. Government, may not be restricted to citizens alone without the same restraints applying to non-citizens. But this is precisely what the Panama Canal legislation attempts to do: U.S. citizenship becomes an unsurmountable restraint barring from appointment to certain civil offices under the United States whereas Panamanian nationals are exempted from this restraint. This anomalous situation appears incompatible with the U.S. Constitution's implied guarantees of privileges and immunities of U.S. citizens, and also of substantive due process guaranteed by the Constitution.

It might be said that the dicta I have cited are more than 100 years old. Well, the Supreme Court does not seem to have changed its mind since 1868 that the Constitution impliedly guarantees U.S. citizens the right not to be excluded from public office because of their U.S. citizenship. I may quote Chief Justice Burger in *Foley* v. *Connelie*, 98 S.Ct. 1067, March 1978:

"The essence of our holdings to date is that although we extend to (permanent resident) aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens."

To sum up, there appears to be no precedent or authority to support the exclusion of all 220 Million U.S. citizens from holding certain civil offices under the United States. This thesis also does not appear to be admitted in any sovereign country. It is, however, well documented in protectorates and colonies. Morocco and Tunisia prior to 1954 come readily to mind.

Conclusion: The U.S. Constitution, by its implied guarantees of privileges and immunities to citizens of the United States, bars the Congress from making foreign citizenship a mandatory qualification to hold a civil office under the United States.

It may seem startling that these five major constitutional issues were disregarded by the U.S. negotiators. However, the recent record of the Federal bureaucracy shows that the U.S. Constitution is not its major preoccupation. One might recall the claim to Executive Privilege on the Nixon tapes or the disregard of the Appointments Clause in the Campaign Financing Act of 1974.

Not one of the many jurists consulted has yet come up with any halfway respectable legal thesis to support the constitutionality of the draft implementing legislation, on any one of the five major points cited. Nor can any such legal counterargument be found on even a single issue in communications from the Congressional Research Service, one member of the Senate Foreign Relations Committee, the Department of Justice and the Department of State, all supporters of the Panama Canal Treaties. It appears from all that correspondence that the unconstitutionality of the implementing legislation, on every one of the five points raised, is not subject to any reasonable doubt.

Mr. Chairman, to illustrate that over a full year no respectable counterargument has yet been found by the Executive Branch to defend the constitutionality of the make-up of the Panama Canal Commission as ordained in the Treaty, I am asking the Committee's consent to insert in the record a letter addressed by the Department of State to the Senior Senator from Delaware, Senator William V. Roth, Jr. This letter is dated May 12, 1978 and is signed by Douglas J. Bennet, Jr., Asst. Secretary of State for Congressional Relations.

If I may now briefly comment on this letter which may be considered to contain the legal counterargument of the Executive Branch requested by Senator Roth, on two of the five issues raised, State does not comment at all. There is no mention in the May 12 letter of the President's removal power nor of the Senate's right to give advice and consent to appointments, both abridged in the Treaty.

On the President's appointment power, State notes it can be limited by law. But State neither contends nor offers any argument in support, that legislation could limit the President's appointive power to the point where he has no choice at all but to appoint Panamanian nominees in a timely manner. That's usurpation of the Presidential appointive power, and the Supreme Court has ruled in *Buckley* v. *Valeo* that such legislation violates the U.S. Constitution.

On appointing non-resident aliens as civil officers of the United States, State says that "U.S. Government may employ aliens." What has this undisputed fact got to do with appointing non-resident aliens as civil officers of the United States?

To get over the hurdle that all civil officers of the United States can be impeached for treason, thus ruling out non-resident aliens as civil officers since they cannot commit treason, State offers what can only be described as a juridical gem: "The governing standard with regard to the crime of treason would differ if the official were a Panamanian national. This poses no constitutional obstacle to the Treaty, however."

Mr. Chairman, the crime of treason is explicitly and exclusively defined in Art. III, Sec. 3, Cl. 1, of the Constitution. So one really must wonder what different standard State thinks could be applied. Does State contend a Treaty can change the U.S. Constitution?

Similarly, on the fifth issue, "the right of U.S. citizens to share in the offices of the U.S. Government, to engage in administering its functions", State says that if this right should indeed be impliedly guaranteed by the U.S. Constitution, then it can still be abridged by a Treaty. That view is the antithesis of the Supreme Court's holding in *Reid* v. *Covert* (1957).

Citing Mow Sun Wong, 426 U.S. 88 (1976) in support of excluding all 220 million American citizens from certain public offices under the United States, is another juridical gem. Mow Sun Wong involved the employment of permanent resident aliens by the United States in such positions as janitor and postal file clerk. The Court said the U.S. Constitution did not bar such employment of permanent resident aliens, and if the Congress wished to bar them by legislation, due process required that the Congress should give some rationale for so doing. What has this case to do with U.S. civil offices?

In a very serious vein however, sharp issue must be taken with the arrogant and discredited theory contained in State's May 12, 1978 letter that the U.S. government may abridge constitutional rights of U.S. citizens when such governmental action "serves to enhance Federal interests substantially." In a veritable string of recent decisions, the Supreme Court has given short shrift to this alleged right of the U.S. Government. For instance, in *Kent* v. *Dulles,* 357 U.S. 116 (1958), the Court decided that the U.S. Government could not, by virtue of its power to regulate foreign affairs, interfere with the right of citizens to travel abroad impliedly guaranteed by the U.S. Constitution. And the Court said in *Afroyim* v. *Rusk,* 387 U.S. 253 (1967):

"To uphold the Congress' power to take away a man's citizenship because he voted in a foreign election in violation of Par. 401 (e) would be equivalent to holding that Congress has the power to "abridge" "affect" "restrict the effect of" and "take away" citizenship. Because the Fourteenth Amendment prevents Congress from doing any of these things, we agree . . . .

Considering the foregoing, can it be seriously contended that the President and Sixty Seven Senators have the power, with the subsequent consent of the full Congress, to deprive all 220 Million Americans of the right to hold certain offices under the United States of America? Particularly since Congress has no power to treat naturalized citizens differently than citizens by birth. See *Schneider* v. *Rusk,* 287 U.S. 253 (1967). So how could the Congress enact a law that treats Panamanian nationals, non-resident aliens, as a privileged category in filling certain civil offices under the United States, to the exclusion of all American citizens?

I now turn to the argument recently presented to this Committee by Mr. H. Miles Foy, Attorney-Adviser, Office of Legal Counsel, for the Department of Justice. Mr. Foy concedes that the U.S. Constitution does not allow persons owing no allegiance to the U.S., to become U.S. civil officers. But he argues that for that very reason and because of the lack of U.S. control over them, the four Panamanian directors are not U.S. civil officers in the sense of Art. II, Sec. 2. In support, Mr. Foy cites primarily the Treaty's objectives and the U.S. constitutional power to turn the Canal over to Panama.

The reason I did not deal with this argument in my prepared statement is that I did not hear it made by anybody before Mr. Foy did. For instance, the Department of State maintained the exact opposite in its letter of 12 May 1978 attached to my written statement, namely that the 4 Panamanian members of the Panama Canal Commission are indeed holding U.S. civil offices, but that Congress had the power to permit their appointment and even to make Panamanian citizenship a mandatory qualification. I quote the second paragraph of State's letter:

"Mr. Breecher notes that . . . four of the nine directors of the Panama Canal Commission are to be Panamanian nationals. Mr. Breecher questions whether this provision constitutes an impermissible limitation on the power of the President, with the advice and consent of the Senate, to appoint officers of the United States.

It is clear that, in creating federal offices, Congress may prescribe qualifications which necessarily limit the scope of the President's appointment power."

It is not clear to me who is talking at this time for the President, State or Justice. Their respective defenses are mutually exclusive, of course, although State's thesis must obviously have been that of the U.S. Treaty negotiators. However, it matters not on which thesis the Administration wants to rely, both are without merit.

The Justice Department's argument raises a host of constitutional objections, among others the following:

1. Does Congress establish something other than 9 U.S. civil offices by creating the Panama Canal Commission by law? If so, what? And where does Congress derive its constitutional power from to create whatever these other offices are supposed to be? Emphatically not from the Treaty!

2. Can the President appoint persons not U.S. civil officers? If so, what are these people? Where does the President derive his constitutional authority from to appoint them, if not from Art. II, Sec. 2? And why is this alleged additional appointment power of the President wider than that under the Appointment Clause? Is there any precedent for such appointments?

3. How can U.S. Governmental responsibilities be exercised by persons that are not civil officers of the United States? Consider for instance the perfectly likely case that for a particular decision or regulation, the 4 Panamanians join a U.S. minority of 1 or 2.

4. Mr. Foy says that in contrast to the Panamanian directors, a Panamanian Administrator or Deputy Administrator is a U.S. civil officer because the U.S. has control over him, through the removal power. That corresponds to the Foy definition of civil officers, but what allegiance does that Panamanian owe the United States? So why is that type of appointment constitutional? Why is it constitutional to exlude all American citizens from that office?

5. Where in the Constitution can any basis be found for the fine distinction that it is alright to give a foreign Government a minority voice on a U.S. governmental Agency, but not a majority voice?

Until the Department of Justice furnishes evidence in constitutional jurisprudence to answer the above questions satisfactorily, its memo is merely an unsupported unprecedented reading of Art. II, Sec. 2. But we do not have to examine the foregoing and other constitutional objections one by one, because the Supreme Court had indeed given us a definition of U.S. civil officers in *Buckley* v. *Valeo.* It fits all the nine members of the Panama Canal Commission perfectly, and contains none of the Foy concepts. I quote from the Congressional Research Service Memo of 30 January 1978, mentioned on page 5 of my witness statement:

During the course of its decision, the Court wholly redefined the constitutional concept of Federal officer and for the first time supplied substantive meaning to the constitutional terminology.

Specifically, the Court in *Buckley* greatly expanded the class of "officers of the United States." It did so by giving the term substantive content defining it to include all these persons exercising significant governmental authority. Such authority would include duties and functions relating to the administration and/or enforcement of public laws but would not encompass duties or functions which operate merely in aid of the legislative function such as investigation or information gathering. The Court also took pains to make it clear that such offices could be located elsewhere than under the hierarchical control of the cabinet departments.

Mr. Chairman, I rest my case on the Justice Department argument. With due respect, I consider it has not the slightest merit. But permit me to add that nothing I have said here should of course cast the slightest aspersions on the Department of Justice or on Mr. Foy personally. As Justice Jackson, himself a former Attorney General, once remarked, the Attorney General has the President of the United States for a client. And it is a lawyer's duty to do what he can, through the exercise of his skill and ingenuity, to defend whatever case a client has created for himself, be it strong or weak. In fairness to the present Administration, however, I should also note that there is reason to believe that it inherited from an earlier Administration what may be considered a colossal legal blunder.

Mr. Chairman, the Committee may have every right to wonder why the fundamental and very clear constitutional issues I have outlined were not raised during the long debate on the Treaty. But that's perfectly natural.

In the first place, a summary reading of the Treaty indicated that these nine men are some kind of a bi-national board outside of the Panama Canal Commission itself. I quote "The Panama Canal Commission shall be supervised by a Board composed of nine members. . . ." It takes close reading of the whole Treaty to discover that there is no Panama Canal Commission other than this Board, that these nine wisemen are indeed the Panama Canal Commission itself.

Second, the Treaty had already engendered much debate on a constitutional issue only too apparent to the Congress, the issue on the disposition of U.S. property. 34 Senators, including the distinguished Majority Leader, had gone on record in S. Res. 97, 4 March 1975, that "it is the sense of the Senate of the United States of America that: . . .

(3) There be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in Article IV, Section 3, Clause a, of the United States Constitution."

This major constitutional issue would seem to be just enough constitutional baggage for one Treaty. Who would suspect that there might be more, and even more evident, flaws of a constitutional nature contained in the Treaty? I venture to say that he would, like myself, have to have had some very special personal reason to suspect that there might be some constitutional problem with the make-up of the Panama Canal Commission. Mr. Chairman, I feel very much like the Child who shouted: "But the Emperor has no clothes on".

Third, the Senate wisely, by an 84:3 vote, gave itself and the House a full year to consider this and other matters further in the implementing legislation. The Senate accomplished this through the Brooke Reservation, the purpose of which was to give the full Congress a year to study implementing legislation which the Executive Branch had promised for October 1977 and which had been sent to the Senate in draft on 3 March 1978.

Here I want to mention a very important point related to the Brooke Reservation: The Treaties have not as yet been ratified, and they will not be ratified until the effective date of the exchange of ratification instruments. Before 31 March 1979, the President can withdraw or alter the instrument of ratification. Similarly, the Senate, by a two thirds vote, can amend its Ratification Resolution of 18 April 1978.

Mr. Chairman, my testimony here pertains to a constitutional issue of fundamental importance for our free institutions and the rights of all American citizens. But this issue is not one of principle only, however over-riding in importance. It has also great and immediate practical significance, say on such a mundane matter as how much we shall be paying for Alaskan oil.

The make-up of the Panama Canal Commission determines the de facto control over the Canal once the Treaties go into effect, until the year 2000. Now the way the negotiators set up the Panama Canal Commission under the Treaty, with five United States versus four Panamanian members, may have reassured the U.S. Senate and the American people, by making it appear that the United States would have control over this U.S. Government Agency. But in actual fact Panama would have exercised control right away for all practical purposes. The reason is that the Panamanian Government could confidently expect that at least one of the five U.S. members of the nine-men Panama Canal Commission would vote with the four Panamanian members on any major financial or personnel matter, and perhaps on other matters as well. Not the same U.S. member on every issue, of course. But Panama has firm control over the Panamanian members, whereas the U.S. members of the Panama Canal Commission would be acting on their own responsibility, subject only to the right of the President to remove them after the fact. It's like one person holding 45 percent of the voting stock of a corporation when the other 55 percent are split five ways: the 45 percent holding assures defacto control over the corporation.

To sum up, Mr. Chairman, the Panama Canal Commission is an essential element, indeed the linchpin, of the Panama Canal Treaty of 1977. If as I have outlined, this Commission cannot be established as ordained in the Treaty without violating the U.S. Constitution, then the Treaty cannot be implemented, unless and until it is suitably renegotiated.

The alternative, namely amending the legislation to conform with the U.S. Constitution, would bar the United States from exercising any rights under the Treaty, because these rights are granted by Panama as the territorial sovereign and may be exercised by the United States only through the Panama Canal Commission, constituted in accordance with the Treaty provisions.

Under these circumstances, it would seem mandatory that the President now put before you at once whatever legal case he may still wish to make in defense of the constitutionality of the legislation. However, unless this Committee is given legal arguments satisfactory to the Committee in a timely manner which squarely address the five major constitutional issues raised, it appears that the implementing legislation should not be considered further, but be rejected as unconstitutional.

In conclusion, Mr. Chairman, let me stress that the Supreme Court is not the only guardian of the Constitution. The Congress is just as much its guardian.

There is one limitation, and only one, on the great and awesome power of the elected Representatives of the people, to vote for whatever legislation they, and only they, might deem appropriate. It almost never comes into play, but it applies in this case. Unless a Congressman or Senator has reasons satisfactory to himself which tend to show substantively that the legislation he is considering does not violate the U.S. Constitution, he or she is under his oath of office to support the Constitution obligated to raise the constitutional issue and to oppose that legislation.

In the case of the Panama Canal implementing legislation, it makes no difference if any member of the First Branch of our Government should believe, quite erroneously, that the Treaty giving the Canal to Panama will go into effect on 1 October 1979, regardless of what the Congress or the President may do, so that even while he himself opposes the Treaty, the lesser evil would be if the constitutional issue is not raised and the implementing legislation passed, so the U.S. will at least retain some rights. Nor does it make the slightest difference if a supporter of the Treaty thinks the implementing legislation is the most wonderful law ever devised in the U.S. national interest. Unless he is satisfied that a respectable legal case has been made to show that setting up the Panama Canal Commission as ordained in the Treaty is permissible under the U.S. Constitution, he must reject the legislation proposed by the Executive Branch. The Constitution comes first.

Thank you, Mr. Chairman, for your courtesy and fairness in hearing me. I shall now be happy to answer any questions you and other members of the Committee may have.

Mr. Bonior. Our next witness is Robert Blake. Mr. Blake is a retired Ambassador with 30 years of experience in the American Foreign Service. He has held two posts in Latin America, in Cuba and Nicaragua. Presently, he is the chairman of the Panama Canal Zone Environmental Task Force and a director of the Natural Resources Defense Council, as well as serving on board of trustees of the Nature Conservancy and International Committee of the Sierra Club. Ambassador Blake is a senior fellow for the International Institute for Environment and Development.

Ambassador Blake, we welcome you here and we look forward to hearing from you.

STATEMENT OF AMBASSADOR ROBERT O. BLAKE, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, AND CHAIRMAN, PANAMA CANAL ENVIRONMENTAL TASK FORCE

Ambassador Blake. Thank you, Mr. Chairman. It is sort of an irony that Charlie Breecher and I are together here today and talking about different things. He and I spent many hours, long hours, as you can imagine, talking about development in Tunisia when he and I were serving there together many years ago.

I will not read my statement; you have it in front of you. I would just like to make two or three points, and then reply to any questions that you might have.

As I see it, the environmental aspects of the Panama Canal Treaty really affect the question of how it runs and the resources that, to a great extent, are available, particularly water, to make the canal go. We believe, in our Environmental Task Force—groups of people that have been looking at this question very carefully—that there is a possibility to establish in the environmental commission the kind of a cooperative arrangement between ourselves and the Panamanians which will make the operation of the canal possible for many years.

As you know, the principal problem that we are facing right now is that in dry seasons, because of the deforestation of the Canal Zone watershed, there may not be enough water to insure easy passage of the ships. Sufficient water supply can be reestablished and will be reestablished if the planned reforestation takes place.

I had just two particular points, Mr. Chairman. They are related to what you here in this committee have to do in recommending implementing legislation and compling a legislative history. First, it is very important that when an environmental commission is appointed people that are knowledgeable about environmental matters, about resource matters, about the problems of how it is going to be possible to keep the water flowing, to keep the health conditions, are appointed.

I am convinced, from my experience in working on technical commissions. I had a period when I was Deputy Assistant Secretary of State for International Organizations—that it is quite important to allow the environmental commission to work, for its members to operate, without too precise directives from the State Department, from the Department of Defense; to allow the commission to develop the kind of relationship with Panama that will be constructive.

Obviously, the commission needs a small permanent staff. I would say that it should be on the small side at first, and then let it grow. The commission must be in a position to monitor what is happening in the zone. It must have the technical means, which sometimes we have lacked before, to know what really is going on environmentally.

In the longer run, planning with and working with the Panamanians, it should be possible to establish the kind of a cooperative arrangement, such as we have with other countries like Canada, which will make it easy to run the Canal in the safe way.

I would commend the AID for the excellent work it has done in beginning the reforestation of the canal watershed, through its watershed reforestation program; I understand it has just been approved and should be starting to be implemted fairly soon. This is the kind of good work that can be done.

Finally, I recommend that this committee, although it is not an appropriating committee, go on the record in favor of appropriating enough money to run the commission [not very much required for that]; to plan constructively for how to keep the canal in operation [not too much required for that, either]. I think that somewhere around $400,000 would be enough for the first year; it might even be more money that you really needed. These funds should be appropriated in under the State Department budget, except for some of the larger construction projects.

Those are the main points of my statement, Mr. Chairman. I would be happy to answer any questions that you might have.

Mr. BONIOR. Thank you for your statement. I, unfortunately, have not had a chance to read it, although it is brief and I will do so.

The AID package that you are talking about—I do not know if it is in your statement, but I recall a figure of about $14 million, in which the United States was participating with the Panamanians in the reforestation project. It seems to me that the Panamanians made a substantial commitment themselves to that in terms of dollars. Do you recall the figures at all?

Ambassador Blake. No, I do not. I am sorry. We have them right here, is that right, Bob?

Mr. Otto. Mr. Chairman, the AID contribution to the activity was $10 million in loaned funds, and the Panamanian contribution was $6,800,000.

Mr. Carney. Would you please identify yourself for the record?

Mr. Otto. Yes, sir. My name is Robert Otto, and I am with the Bureau for Latin America and the Caribbean of AID.

Mr. Bonior. Can you tell us a little bit about the island that we saw, Barro Colorado, that is in the canal and the plans that the Panamanians have for preserving that island?

Ambassador Blake. Mr. Chairman, Dr. Challinor from the Smithsonian, testified before the committee. He is much more knowledgeable than I am on that particular thing. As I understand it, the part of the agreement which deals with Barro Colorado is not directly related to the environmental chapter. Its purpose is to maintain the island and the peninsulas that surround it as a preserve for the endangered species which are found in that area. It is one of the last pieces of humid tropical forest left in this area. For many reasons, the Smithsonian, the U.S. Government, most of the scientists in the United States and certainly the Panamanians, very happily, believe that the preservation of that land is of enormous importance.

Our own group has been working hard, both with the Department of the Army and with the Panamanian Government, to encourage them to not only recognize the importance of maintaining this forest area, but also to find the means to preserve it. Now, the important means to preserve this forest are not fences and people to patrol the forest, but the political will on the part of the Panamanians, who are faced with a rather serious population problem, to keep their people from going in and destroying the forest; that is what the real problem is.

When the canal treaty was being negotiated, the State Department lost their guts and did not push the Panamanians hard enough on this. Nor did the Department of the Army. As a result, a lot of cutting was done in the last few years which very seriously damaged the Canal Zone watershed. Now, however, I think the Panamanian Government and the U.S. Government understand the importance not only of preserving the Pipeline Road Forest, but of preserving the whole watershed, and there is quite a different attitude. Nevertheless, it is tough politically to stop illegal cutting. If you are a politician in that area and your farmers do not have any place to go to grow their crops and they are used to going in and cutting forests and burning, it is not an easy thing to stop, and it will take a lot of courage on the part of Panamanians to do this.

Mr. Bonior. As I recall from earlier testimony, there was something like a relocation of only about eight or nine families; we heard that in Panama from Dr. Zambrano, eight or nine families farming there. Most of the incursions into the property that was being reforested were, I believe, by people from urban areas, were they not?

Mr. MODGLIN. Yes.

Mr. BONIOR. I have an interesting question that was just given to me in my book here; let me just ask you and get your response to it. On page 2 of your statement, you want the joint commission to receive funding from various programs. The Department of State sees the joint commission as an advisory group with other agencies to carry out the programs of the environmental protection. Can you accept the State Department's view?

Ambassador BLAKE. As an advisory group?

Mr. BONIOR. Yes; State sees it as an advisory group.

Ambassador BLAKE. Well, that takes probably a little bit more definition. I do not think the Commission should build up a big staff; they should use people outside that staff to do many things, to do a lot of the planning and, perhaps under contracts, do some of the monitoring. What you really need, in my view, is a small group that is going to be right on top of the zone's environmental problems all the time, who will be working with the Panamanians on a day-to-day basis. They need not build up a big bureaucracy—I am really quite opposed to that—but keep the permanent staff as a small, tight, tough group who really knows what they are doing. Of course, their job is not only technical. A big part of it is to maintain good human relationships, to maintain the kinds of contacts with the Panamians and others that will make this thing work.

They should be in touch constantly with AID on the watershed project; they should be in touch with public health on monitoring disease, water control, air pollution—those other things that are important. They should not try to do all this themselves.

So to a degree, I do go along with the State Department. I would say—on the question of the word, "advisory"—they would not advise other people; they would tell them what to do, contract with them for the services, review their work and then share it.

Mr. BONIOR. Mr. Carney?

Mr. CARNEY. Yes; Mr. Blake, I see that you say you do not believe that the Environmental Commission should rely on canal tolls for any of these things that you propose, the $400,000 administrative costs, major projects in the future, reforestation, et cetera. That kind of goes against the grain of the whole idea that it was not going to cost us anything.

Why do you feel that these programs should not come out of tolls?

Ambassador BLAKE. Because I think there are going to be higher priority things to do with canal tolls for political and many other reasons, and that not enough will seep down to environmental programs. Now, I think these programs are absolutely essential to maintain the canal, and I would much rather see appropriated funds used. I do not say that no tolls could go to these type of things, but I think it is much more orderly to do it the other way.

Also, I would like to see the Congress keep a good eye on these activities through appropriations process, probably through reviewing line item in the State Department budget. That would be a good way—there are other ways—to do it. But that is my basic argument there.

Mr. CARNEY. Do you have any idea of what these major projects would cost in the future? I know some of them should start now, like reforestation in the areas where they have cut and burned. Does anyone have a handle on the cost of that and what it might cost the U.S. taxpayer to continually maintain the watershed areas?

Ambassador BLAKE. I do not think, once we get the thing started, it is going to be an enormous cost. I cannot quantify it for you; I have never done one of those projects.

The big cost in reforestation is getting people out there. To do the planting the trees do not cost much; they cost practically nothing—you set up a nursery; it is small. The next big cost is to guard the planted trees and see that the goats do not eat them.

You have other areas of the watersheds that you are going to seed with grass to prevent erosion because you do not have to reforest the whole area. We may be able to use the same people—after all, they are farmers—that have been cutting and burning in the forests to do the planting. What they need is some food to put in their mouths, and this is a good way to get it, in my view.

I have seen tree programs done in other countries. And if this is done correctly and done cooperatively with the Panamanians—after all, reforestation has to be not only in the zone, but in all the watersheds in Panama that drain into the zone—it ought to be done relatively cheaply.

Maintaining these forests should not be terribly expensive. If you get into some very expensive aspects to do with an ocean-level canal, that is totally different, but we are not really talking about that. If we are thrifty and use good sense and have the cooperation of the Panamanian Government, it is not going to be a high-cost item.

Mr. CARNEY. You feel now, and certainly I do, too, that the surrounding areas of the watershed have suffered from the practice of cutting and burning by farmers, the Panamanian farmers, and if this practice continues, we will interrupt the efficient operation of the canal because of lack of waters in the dry season.

Ambassador BLAKE. That is it.

Mr. CARNEY. Would you like to comment—I know it is a very vague question—would you like to comment about your feelings as to whether it would be easier to prevent the cut and burn technique when the Panamanians cannot control the area, or do you think we have a better chance of doing that now?

Ambassador BLAKE. Well, the Army has not shown any great courage on this point, to tell you the truth. There have been political reasons for it; I am not sure how I would have handled it if I had been in the same position.

There are two reasons the Panamanians have not done anything to stop the cutting: A, they say they did not have——

Mr. BONIOR. It was in their own self-interest to do it.

Ambassador BLAKE. That is right. However, the Army did not want any fights with the Panamanians, any, quote, "unnecessary," unquote, fights. Well, you know, a lot of trees have been cut and a lot of dirt has run down into the lake, and it is pretty late in the game, but reforestation has got to be done if the canal is going to continue to operate, and I think it can be done. I think it will be easier, because now you have the cooperation of the one group that has to take the political heat, to resettle those people, to keep them out.

Most of Panama, you know, is deforested. You have to go way down to the Darien Isthmus before you find really thick trees anymore. Because of population pressures, the Panamanians have cut down most of the trees in the whole country. There are areas that are exceptions, but this is a tough problem for the people and the Government. But they seem to be willing to tackle the Canal watershed reforestation; I hope that is right.

Mr. CARNEY. The Environmental Commission's findings and recommendations, if they are not enforced or carried out by the commission itself, will virtually be going nowhere, would you not feel that to be true?

Ambassador BLAKE. I would not think of the Commission as an EPA, or anything like that, but as a group whose job it was to alert people to problems, to build up a knowledge and understanding of problems. They will have to rely, essentially, on the Panamanian Government for enforcement. There will be technical aspects that certainly they can watch and help with—disease control, the question of water quality, and things like that—but I consider those relatively straight-forward technical problems that can be handled just the way we handle them in our cities without too much trouble.

Mr. CARNEY. Thank you very much, Mr. Blake; I appreciate it. Thank you, Mr. Chairman.

Mr. TANNENBAUM. The point Congressman Carney raised on the appropriated funds—if this is such a vital thing for the operation of the canal, why should it not come out of the costs of the Commission? I was not satisfied with your response to that. Could you elaborate a little bit?

Ambassador BLAKE. My own suspicions, from seeing a lot of these things operate, are that when you have a fixed pot of money, that the money goes where the squeaky wheel is. The regular operations of the canal are likely, in my view to take all the money. This is a guess; who can know?

Mr. TANNENBAUM. Then you are saying, in effect, that we cannot efficiently operate the canal until the end of the year with the canal revenues.

Ambassador BLAKE. But that was not my only argument. I would like to see a control maintained here in Congress and have programs looked at through the straight appropriations process, too; I would like to see you men in the Congress keep a good watch on these things, be sure they are going right. Over the years, I have seen a lot of mistakes corrected by congressional oversight—and I would like to keep that element in it.

Mr. CARNEY. I would like to see the Congress, through oversight, correct the mistake we are making here.

Ambassador BLAKE. Mr. Chairman, we in our Task Force will continue to follow this closely. There are a lot of people here in the United States interested in this. We believe that the commission can be an element in establishing the kind of relationships that we want to have with a lot of our countries in the Western Hemisphere, things that are very much in our self-interest, and we believe that this commission, if it is done right, if it is given a kind of independence and it is not interfered with too much, can develop the kind of relationship which will be a good example all through this hemisphere, and perhaps other places, too.

Mr. TANNENBAUM. I am still not totally satisfied here. If this is not a squeaky wheel and it is not important enough, why should the Congress appropriate $400,000 a year to do this, rather than appropriate the money to the south Bronx, for instance, which is a very squeaky wheel? We have been told that the Commission will be able to operate the canal efficiently, at no cost to the U.S. taxpayer, and if these separate appropriations are made, then it goes into the question of the contingent payments to Panama and a lot of other issues come into play. I am just baffled. If this is such an important issue for the operation of the canal, why would not an efficient management consider it a squeaky wheel priority?

Ambassador BLAKE. Well, I think I am making a little bit of difference between the commission itself, its activities and its meetings, and projects. If a project is important, if reforestation is important and a case is to be presented, it would probably be done. The right people to do it is AID; they know how to cooperate with the kinds of people who know how to do these things, and that is a very good way to do these big projects. I would rather do it through AID than have the Panama Canal Company doing it.

Mr. TANNENBAUM. Thank you.

Mr. BONIOR. I think what you are doing is making a differentiation between the reforestation situation and the running of the commission itself.

Ambassador BLAKE. That is right.

Mr. BONIOR. I think the former, reforestation, is very vital, obviously, to the whole operation of the canal.

Ambassador BLAKE. It has got to happen.

Mr. BONIOR. And as you pointed out, it is in the self-interests of the commission and the Panamanians to make sure that that program, through AID and the cooperation between both governments, takes place.

Ambassador BLAKE. Yes.

Mr. BONIOR. Your fear, of course, is that the staff and the working body itself will—as all environmental things seem to get placed as a very low priority of governments—will fall very low in the totem pole in terms of priorities.

Ambassador BLAKE. That would be my fear. I would rather insure that it did not happen that way. I do not think environmental programs always do fall low; I think sometimes they have gotten very good support by Congress. But I would rather see the Panama Canal tolls going for the operation and maintenance of the canal itself, rather than these other aspects.

I would not live and die over this; if it went the other way, it would not be something that would be the end of the world, in my view. It is not a determining and final thing; it is just my instinct that this would be the better way to handle it.

Mr. BONIOR. Thank you, Mr. Ambassador.

[The following was received for the record:]

Prepared Statement of Ambassador Robert O. Blake, Regarding Environmental Aspects of Panama Canal Treaty Implementation

I am Ambassador Robert O. Blake, chairman of the Panama Canal Environmental Task Force. This group is made up of four environmental organizations, the Natural Resources Defense Council, the Sierra Club, the Nature Conservancy, and the World Wildlife Fund. Together they have a membership of nearly 300,000 members. Other groups, like the Audubon Society and the Friends of the Earth, are associate members. All of these organizations are vitally interested in bringing about constructive environmental cooperation between Panama and the United States with regard to the Canal and the Canal Zone, and also of course with Panama as a whole.

I thank the committee for inviting me to testify today on proposed legislation to implement the environmental provisions of the Panama Canal Treaty. At the earlier stage we strongly urged the Executive branch to provide in the treaty for an Environmental commission which could insure United States-Panamanian cooperation for maintenance, and some cases for the restoration, of the environmental integrity of the Canal and the Zone. Now, Mr. Chairman, we in the Canal Zone Task Force urge this Committee, and the Congress, by the legislation it passes and by the legislative history it establishes, to do several important things.

First, Congress should make clear that it expects the U.S. members of the treaty's Environmental commission to develop a cooperative and highly professional relationship with their Panamanian colleagues on the Commission. Members of both sides should, to the greatest extent possible, be qualified environmental experts and scientists or otherwise be environmentally knowledgeable. They should have a broad knowledge of the problems of preserving the forests, the plants, and the animals of this very unique area just as much as of how to maintain water and air quality of public health. We believe that the Environmental Commission should be a working technical body, largely independent of political pressures. The American members should serve as an "uninstructed" delegation. They should be encouraged to take initiative in identifying environmental problems affecting the Canal Zone. They should be able to undertake appropriate studies and work out constructive solutions to the environmental problems of the Canal and its surrounding areas. The Commission should be permitted to carry out its work without having to await literal instructions from Washington. Technical cooperation of the kind needed to preserve the environmental integrity of the Canal should go on without bureaucratic interference. Adequate control over the Commission's efforts can be maintained through the budgetary process and through review of its actions. The Commission should report to the President through the Department of State.

Secondly, we believe that the Environmental Commission should be provided with a small permanent staff. It would work in close collaboration with the Panama Canal Commission and the U.S. Embassy in Panama as well as with Panamanian colleagues. People on this staff will hopefully be skilled in both the technical environmental sciences and in the art of close cooperation with other nations.

Thirdly, we urge that from the outset the Environmental Commission be provided by Congress with adequate appropriated funds to finance the expenses of the Commission's meetings as well as to finance the daily monitoring and planning activities of its staff. The Commission must also have adequate funds to finance the abatement of environmental threats to the Canal as well as to finance the improvement of environmenting degraded areas, such as the Canal's watershed, and to protect its unique natural areas. We believe that, like similar technical organizations, funds for the Environmental Commission's meetings and daily operations might well be provided for through the budget of the State Department. Funds for broader constructive projects could be financed either through that budget or through the budget of other appropriate U.S. agencies. For example, a recently authorized AID project in Panama which, inter alia, provides for the restoration by reforestation of the Canal's watershed offers a happy precedent for such inter-agency cooperation. We urge that Congress authorize and appropriate at least $400,000 for the operation of the Commission and its staff for Fiscal Year 1980. We also urge that once the Commission is formed and has had time to plan a serious program, Congress consider a supplemental appropriation to cover the costs of such a program. We do not believe that the Environmental Commission should rely on Canal tolls for these purposes.

Mr. Chairman, maintaining the environmental health and safety of the Canal is in this country's vital interest. Unless they are insured, the Canal will not long operate efficiently. In sum, we urge that this Committee take the lead in urging Congress to provide adequate funding for the Environmental Commission's operations. We also urge that this committee, in its report to the House, express its strong intent that the American members of the Commission be mandated to act, independently and courageously, in the building of a strong cooperative environmental effort with Panama for the protection of the Canal.

Mr. MODGLIN. The chairman has asked me to announce that the next hearings of the subcommittee will be next Tuesday, the 13th, at which time financial experts, representatives of ports of the United States, and various maritime groups will testify.

Mr. BONIOR. Thank you.

[Whereupon, at 11:31 a.m., the subcommittee adjourned to reconvene Tuesday, March 13, 1979.]

CANAL UNDER 1977 TREATY

TUESDAY, MARCH 13, 1979

House of Representatives,
Subcommittee on the Panama Canal,
Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:10 a.m., in room 304, Cannon House Office Building, the Hon. John M. Murphy presiding.

Present: Representatives Murphy, Hubbard, Biaggi, Anderson, Bonior, Mikulski, Bauman, McCloskey, Treen, and Carney.

Staff present: Merrill Whitman, counsel; Kenneth Merin, minority counsel.

Mr. Murphy. The subcommittee will come to order.

Today's hearing is another one of the important hearings this subcommittee will hold with respect to implementing legislation. We have two of the top experts in canal finances. We also have before us a coalition of gulf and Atlantic port personnel who have made a major effort to analyze the implementing legislation and make suggestions to improve it.

We assure the port representatives and the maritime industry representatives who will be accompanying them that we will listen closely to the suggestions which have been derived from their deliberations.

The American Institute of Merchant Shipping will also be testifying today. The institute not only represents a number of U.S. maritime interests but is also a representative of the International Chamber of Shipping, the membership of which covers the world's merchant marine.

We are happy that American maritime interests are finally emerging on this issue. They either were not invited or were totally silent during the treaty deliberation process and it is going to be very helpful to have the major U.S.-flag users of the canal appear at this time.

I would also ask the committee for unanimous consent to enter in the record at the conclusion of the testimony of Secretary Carswell, excerpts from the 1912 report of the special commissioner who, was later appointed in 1937, together with the proclamations of the President establishing tolls in accordance with the recommendations in those reports. These documents show that interest was included in the formulas for tolls from the time the canal was first opened.

[The material is included at the conclusion of Mr. Carswell's testimony.]

Mr. MURPHY. At this time, I would like to yield to the distinguished gentleman from Maryland, Mr. Bauman.

Mr. BAUMAN. Thank you, Mr. Chairman.

I don't want to, in anyway, interrupt or delay our witnesses but I thought the subcommittee members themselves ought to be aware of a few developments or, should I say, lack of developments regarding previous testimony. I have made repeated inquiries of the State Department and of the Panamanian Embassy in the United States to find out where the so-called clarifications of issues that arose during our hearings in Panama are.

And I have been told repeatedly that in the case of the State Department Panama desk they know nothing about it but that Ambassador Moss promised them they would be forthcoming. The Panamanian Embassy, similarly, gave no particular response.

I was under the impression, and I think our records indicate, that we were guaranteed clarifications from the Panamanian Government on the issues that were raised. Some of them are so serious that there is now a movement afoot in the House to either impede or nullify the treaty.

I just wanted to restate for the record that we were given assurances by the State Department, by Justice and by other departments that these issues would be addressed before we got to mark up. This is now only a matter of 10 days or 2 weeks away and, still, we have not received any definitive responses.

And I would also like to ask unanimous consent to place in the record at this point, again so that we may have a somewhat symmetrical view of what is going on, some very interesting editorials and comments from the Panamanian press in which the members of this subcommittee are characterized as power-crazed minds, racist, and a number of other epithets, to quote La Republica, which is sort of a London Times of Panama, in which the chairman and the ranking minority member also are dealt with rather harshly simply because we raise these questions.

But I think this is typical of the attitude that we saw displayed on the part of some of the officials that we met in Panama. I think the record ought to show exactly what is happening down there.

Mr. MURPHY. Were they referring to the entire committee or just certain members? [Laughter.]

Mr. BAUMAN. I think some more than others.

Mr. MURPHY. I think we are all aware that there is no free press in Panama and has not been since the Torrijos overthrow of the Arnulfo Arias government, but we might respond to that with a quote from Thomas Jefferson. He said: "The only thing worse than a free press is not having one." I think Panama is certainly a classic example of that at this time.

Hopefully, we will have the answers to the questions that we posed to Ambassador Moss at one of our earlier meetings prior to the markup. The subcommittee will go to Panama and get on the record the fact that we had a refusal by Panama to respond to these questions that we feel are critical to the deliberation and proper markup by this committee.

Our first witness for this eighth day of hearings on treaty-implementing legislation is Mr. Leonard Kujawa of Arthur Andersen & Co. Mr. Kujawa has appeared frequently before the Panama Canal

Subcommittee because so many of the issues under consideration in recent years have been financial in nature.

In December 1977, Mr. Kujawa presented an incisive statement on the challenges and problems posed by the new treaty arrangement with Panama. In June 1978, Mr. Kujawa gave us the benefit of his views on the sea-level canal.

We view the statement of Mr. Kujawa, and those of all the witnesses today, as being very important.

Our second financial expert to present testimony this morning is Mr. Philip Steers, Jr. Mr. Steers was Financial Vice President of the Panama Canal Company for over a generation. His knowledge of the day-to-day financial requirements of the canal organization is second to none.

Like Mr. Kujawa, he presented testimony before this subcommittee in 1977, and we are fortunate to have him with us again today.

If the committee has no objection, the Chair believes it would be stimulating if we could have our two experts each present their prepared testimony and sit as a panel to answer questions.

Mr. Kujawa, if you and Mr. Steers would come forward, please.

We will hear from Mr. Kujawa first and then Mr. Steers.

I might say, yesterday in my testimony before the Post Office and Civil Service Committee, the financial questions and the questions of from what funds and from what source the early retirement and other financial benefits to canal employees were to come were paramount in the minds of that committee.

Mr. Kujawa, if you would proceed.

STATEMENT OF LEONARD KUJAWA, PARTNER, ARTHUR ANDERSEN & CO.

Mr. KUJAWA. Mr. Chairman, members of the subcommittee, my name is Leonard J. Kujawa. I am a partner in Arthur Andersen & Co. and a professional accountant. Regarding the Panama Canal Company, I have been a consultant on various financial and accounting matters on a continuous basis since 1962.

It is a pleasure to return to testify again before this subcommittee. Today, I would like to propose certain suggestions for your consideration in the development of the implementing legislation which I feel are needed if the Panama Canal Commission is intended to be a self-sufficient, financially viable international public utility.

In previous testimony before this subcommittee, I have chronicled the financial success of the Panama Canal Company. This success is virtually unique in the annals of Government operations. Based on strong management and sound financial policies, the canal enterprise has been able to maintain its financial strength in spite of significant fluctuations in the world's economic environment.

The Panama Canal Treaty of 1977, however, will result in the most profound financial changes ever faced by the canal enterprise. Will the Panama Canal Commission be financially viable after these changes? Can tolls be increased sufficiently to produce additional revenues to absorb the increased costs? Will the longrun financial viability of the Commission be imperiled because toll increases divert traffic which offsets the benefit of toll increases?

This is the heart of the matter and before proceeding further I think it is necessary that you understand what, at least in my mind, constitutes financial viability.

For the Panama Canal Commission to be financially viable, its operating revenues must be sufficient to do two things. First, to cover all operating costs, including those envisioned by the treaty; and second, to provide for the replacement of plant and equipment when existing plant and equipment wears out. In this regard, at least in the near term, all indications are that financial viability can be achieved.

The financial viability of the Panama Canal Commission is vital to the interests of the United States, the Republic of Panama and to world trade alike. Without financial viability there cannot be a proper environment for the harmonious partnership envisioned by the treaty. The treaty implementing legislation will set the stage for that future.

Due to the profound and extensive changes necessitated by the treaty, virtually all of the financial policies currently followed by the Panama Canal Company will have to be subjected to extensive review and reconsideration to determine their propriety for the Commission. The more important financial policy areas in this regard include the following: Financial controls; establishing control through accountability; recovery of the U.S. investment in the Panama Canal; financing capital improvements; and, finally, compensation to the Republic of Panama.

The balance of my statement is devoted to these areas and ways in which they can be dealt with in the implementing legislation regardless of whether H.R. 111 or H.R. 1716 is used as a basis for implementing the treaties.

In past testimony, H.R. 111 has been characterized as providing for an appropriated fund agency, whereas H.R. 1716 has been described as providing for a corporate form. However, there are real differences and similarities between these two bills which are more complex from an accounting and financial standpoint than these broad generalizations may suggest.

Any proposed legislation for the Panama Canal must recognize that it is a business enterprise as distinguished from a government institution. The Panama Canal provides a service for which users are willing to pay a price; in the past this has compensated for all cost of providing this service. In contrast are more typical Government agencies such as, for example, the Veterans Administration. Since the Veterans Administration generates little revenue on its own, its financial management is one-dimensional, that is, control over a single stream of expenditures.

As a business enterprise, the Panama Canal must utilize enterprise accounting as the foundation for a sound basis for financial management of its affairs. By enterprise accounting, I refer to a comprehensive accounting for all costs and revenues over a long term to measure financial performance. Enterprise accounting can accurately measure the performance of the skillful manager whose objective is to mix and balance all resources available to him to achieve optimal financial results.

The importance of enterprise accounting is its multidimensional measurement of the financial impact of management decisions.

That is, in enterprise accounting we measure all financial resources—plant, cash, revenues, labor, et cetera.

The appropriated fund accounting approach on the other hand measures and is concerned with one resource, that is, cash and how cash is utilized.

Enterprise accounting is inherent in the corporate form of organization provided in H.R. 1716.

Although H.R. 111 provides for an appropriated fund agency, it also provides, through section 234, for a form of enterprise accounting. However, H.R. 111 imposes over the enterprise accounting process additional controls through the appropriation accounting process. The question is whether this additional layer of control is necessarily effective, and I wish to discuss with you the factors which may assist you in reaching a conclusion on this matter.

We would all agree that financial controls over the affairs of the Panama Canal Commission are appropriate; but reasonable men can disagree as to the level of controls required. Unquestionably, H.R. 111 provides for potentially greater control than H.R. 1716.

Relevant to one's judgment as to the degree and type of control necessary is one's prognosis as to the likely financial success or failure of the Commission. As previously discussed, in the history of the Panama Canal Company there has been a pattern of financial success.

There is a basis for some optimism that the Commission can, if properly managed, avoid being a burden on U.S. taxpayers. It is not relevant, in my view, to compare the Panama Canal Commission at this juncture with other government-owned enterprises such as Amtrak and ConRail. When these entities were organized, there was a record of significant losses from past operations and there was little basis to anticipate that they could become self-sustaining. Thus, the approach in the management of these loss-prone operations has been one of minimizing losses and the resultant burden on the taxpayer. In contrast, the emphasis on the management of the Panama Canal Commission should be one of providing sufficient flexibility to management to give it the opportunity to continue to be successful and thus not a burden on the U.S. taxpayers.

Based on my experience with the financial affairs of the Panama Canal Company, there are already in existence significant controls over its operations which would be continued under H.R. 1716. These controls include requirements for budgetary review and approval by OMB, for budget program approvals by the Appropriations Committees of Congress, for tolls to be set to recover all costs and for annual financial reporting with an audit by the General Accounting Office. The tolls setting and financial reporting requirements have not only promoted the canal's financial viability but provided control because they expose the canal's financial affairs to the sunshine of outside scrutiny. Such requirements should be continued because they serve the useful purpose of assuring the Congress that the financial affairs of the Commission are under control. In brief, these would maintain the Commission as a fully accountable entity whose costs of providing service are financed by user charges.

Under the present law which provides the canal pricing mechanism, toll changes require notice and hearing as provided by the Administrative Procedure Act. This is of value to the users of the canal in that they are given the opportunity to comment on the proposed tolls and can plan for future costs of using the canal. The requirement for notice and hearing on tariff changes is virtually universal in its applicability to public utilities. Both H.R. 111 and H.R. 1716 would maintain these requirements, though the provisions of H.R. 111 provide greater details regarding the form of notice and hearing. Neither, however, provides detailed specific standards regarding the methods of justifying rate changes. In my opinion, the adoption of such standards would be appropriate. These could include requirements for actual and projected financial and canal traffic data and analyses of projected changes in financial results. Also, neither H.R. 111 nor H.R. 1716 provides a requirement that the public record regarding proposed changes in tolls reflect conclusions reached on concerns expressed by interested parties in the rate proceedings. In my opinion, additional credibility could be brought to this process if such a requirement were provided for in the implementing legislation just as it is in most rate regulated jurisdictions.

To me, the adoption of a policy by the Congress which requires that the Commission be self-sustaining would provide the ultimate in control over the financial affairs of the Commission: that is, self-discipline. In contrast, the consequences that would flow from additional appropriated fund control would be less flexibility and additional recordkeeping. H.R. 111 would require keeping supplemental records, the extent of which would depend on the extent of additional controls imposed. For example, H.R. 111 could be implemented by providing for only one annual appropriation to cover all expenditures. Although this would technically achieve appropriation control, in substance, it would accomplish very little. Accordingly, to achieve additional control, a multitude of appropriations would need to be set, each identifying specific categories of cash expenditures to be controlled. As these categories of appropriation multiply, the complexity of accounting expands at an exponential rate. In this day of the computer, such additional complexity and recordkeeping can be accommodated—however, at a price.

Even more disturbing is that control by appropriations reduces the degree of forward-looking flexibility to manage the affairs of the Commission. The very real potential for the overemphasis of the singular dimension of cash to the exclusion or deemphasis of other dimensions is the flaw in the appropriations control approach which could cause uneconomic longrun financial decisions and reduce the flexibility of the manager to produce longrun optimal results.

Now I wish to address the subject of establishing control through accountability.

The accounting best suited to the needs of the Commission should be tailored to its unique financial requirements and economic environment. Of fundamental significance in evaluating alternatives in this regard is the objective that the Commission be financially viable in the long term. While accounting certainly cannot guarantee financial viability, it can, if properly utilized, facilitate it.

Based on the Commission's need for accounting policies which not only adhere to generally accepted accounting principles but also recognize its unique economic environment as well as facilitate its financial viability, I have concluded that the Commission must have a method by which to measure the economic consumption of the resources conveyed to it and a pricing policy which recovers this consumption. Many of the facilities conveyed to the Commission will require replacement over time so that it can continue to provide service; thus the accounting process must be structured to measure this consumption and report the results thereof.

Property not to be replaced, such as excavations and items to be transferred to the Department of Defense and to Panama, will, from the standpoint of cost, have no economic significance or relevance to the Commission.

To understand the magnitude of the investment in the Panama Canal Company, the amounts presently shown on its books must be stated in terms of today's dollars. This can be readily done using Department of Commerce indices. At today's price levels the Panama Canal Company has $5.1 billion invested in property, plant and equipment, of which approximately $3.5 billion need not be replaced because it represents the costs of such assets as excavations, landfills and embankments which will not need to be physically replaced.

In addition, approximately $700 million of plant is to be transferred to the Republic of Panama and the Department of Defense as a result of the treaty. The remaining $900 million represents the cost of assets to be conveyed to the Commission which must be replaced in the long run to maintain financial viability. Of that amount, the accumulated depreciation at current price levels would be approximately $500 million, leaving a balance of $400 million. This $400 million is the fair value, net of depreciation, or property, plant, and equipment conveyed to the Commission which must be maintained at a constant level to insure viability. On an annual basis, this would require the recovery of about $23 million of depreciation.

These are not just bookkeeping niceties; the Commission's financial reporting should have meaning and significance to this Congress, to the Republic of Panama and to the canal users. Its financial statements should communicate whether the enterprise is maintaining its financial viability or whether it is in financial difficulty. In my opinion, the Commission would realize a profit or surplus only if its tolls exceeded all of its costs, including the consumption of capital necessary to sustain itself. This capital consumption would be properly measured under the method of accounting I have outlined for you today.

To accomplish this accounting, H.R. 111 may need a change in section 234, requiring that the property conveyed to the Commission be valued at its fair value, used and useful, in providing service to world shipping. A similar change is necessary in section 68 of H.R. 1716.

Based on this method of accounting and the provisions of H.R. 1716, the essentials of the opening balance sheet of the Panama

Canal Commission would appear as follows: Plant and equipment, $400 million; permanent capital, $400 million.

This capital is serviced by recognizing approximately $23 million of cost annually through the depreciation of plant and equipment over their service lives and recovering that amount through tolls.

Now, to the matter of the recovery of the U.S. investment in the Panama Canal.

Under H.R. 1716, amended for the changes I have recommended, the Commission would account for its assets and preserve the related $400 million in permanent capital. This same arrangement would be valid as an amendment to H.R. 111. In addition, however, over and above the preservation of permanent capital, H.R. 111 contemplates the repayment as debt of the investment of the United States in the Panama Canal and payment of interest on that investment.

It is important that a clear distinction be drawn here between a requirement for the preservation of capital and one for the repayment of debt. As any businessman versed in finance well knows, business enterprises require a level of permanent capital to sustain their operations. In the business world this is generally in the form of common stock. However, whether a business enterprise is owned by shareholders or the Government is irrelevant to the need for permanent capital. The Panama Canal is a business enterprise and as such, requires a permanent level of capital to sustain itself. This capital has been provided by the U.S. Government and, under the provisions of the 1950 legislation establishing the Panama Canal Company, there has been no requirement for its repayment.

The obvious result of requiring the Commission to pay into the Treasury an amount representing amortization of the investment of the United States as debt and interest on the unpaid balance would be significantly higher toll revenue requirements. This not only raises the question of whether this is fair and equitable to canal users but also whether this is financially feasible. There is in my mind a serious question as to whether tolls can be increased by such an increment over the next 20 years while, at the same time, allowing the Panama Canal Commission to remain sufficiently viable to recover its other financial requirements.

The requirements of H.R. 111 can be illustrated by an opening balance sheet for the Commission which would include the following: Permanent capital, $400 million; debt to the United States, $339 million—a total capitalization then of $739 million.

It is important to observe that in this case the debt that must be repaid to the United States is over and above the permanent capital requirements of the Commission. This debt would be extinguished by annual payments of approximately $16 million recognized in the accounting and ratemaking processes by amortization of the $339 million. If interest is also payable, the initial annual requirement would be some $20 million, which would decline as the principal were reduced through annual payments. At the same time, the recovery of the $23 million of annual depreciation of plant and equipment would be fundamental to the financial viability of the Commission. In this regard, then, the aggregate annual charge to tollpayers under H.R. 111 would be some $59 million compared to $23 million under H.R. 1716. From the standpoint of the tollpayer, however, the higher requirement may be unfair because it causes a doubling up of the costs for which he must compensate the canal enterprise. This double up results from the change in the form of the permanent capital formerly implicitly provided by the United States through its investment to a debt obligation and the requirement to maintain a permanent capital base to sustain the financial viability of the canal.

This double up is analogous to paying rent on a house and, at the same time, making the mortgage payments. There is, of course, a persuasive counter argument to excluding the entire effect of this double-up from toll revenue requirements because a resultant burden would fall upon the U.S. taxpayer to the extent that he, through the U.S. Treasury, would receive neither return of nor return on the U.S. investment which, in the final analysis, was financed with tax dollars.

The next subject I wish to discuss is financing of canal capital improvements.

Historically, the Panama Canal Company has financed its replacements and improvements through reinvestment of both U.S. capital and net earnings. The Company recovers through tolls the U.S. investment in the canal by depreciating all of its assets over their estimated service lives and including this depreciation cost in toll revenue requirements. The U.S. willingness to forgo the repayment of its capital has enabled the Company to replace and improve facilities. A second source of capital has been net earnings. These net earnings have generally been plowed back into the canal; that is, they have been used to finance capital improvements for the benefit of the users of the canal.

A matter not developed in the treaty is the manner in which capital improvements and expansion are to be financed. This will require the type of legislative authority provided in the current drafts of implementing legislation to clarify potential ambiguity related to the contingent payments to Panama under Treaty Article XIII(4)c. The existence of this article in the treaty in effect precludes the Commission from retaining any revenues in excess of cost, thus stripping the Commission of an important means of financing capital which was utilized by the Panama Canal Company. One possibility for financing a moderate level of capital improvements, which appears to be compatible with article XIII(4)c, would be to grant the Commission the authority to impose additional tolls in the form of a surcharge. Both H.R. 111 and H.R. 1716 provide such an authority. The resultant receipts obviously should not be considered "surplus" under the provisions of article XIII(4)c, but should be legislatively designated as capital funds or the intended result would be frustrated. H.R. 111 would require, in my judgment, a provision in section 412 to accomplish this result.

You have requested that I offer suggestions for possible controls over the surcharge authority of the Commission. Controls could be imposed by maintaining the rate-regulated status of the Commission through the following:

I list six possibilities here. Establish a ceiling on surcharge collections to insure that only moderate improvements are financed in this manner.

The imposition of a surcharge should be specifically addressed in the administrative aspects of the toll-setting process.

The surcharge should be imposed as a separate component of the toll rate and accounted for not as revenues but rather as a liability to ratepayers until invested in improvements.

The surcharge should be clearly tied to specific projects.

The imposition of the surcharge should expire when the budget amount for the related projects has been collected from the ratepayers.

Any amounts not expended for such approved projects should be refunded to ratepayers through a prospective reduction in toll rates.

The final item I wish to address with you is the compensation to Panama under the treaty.

There is a significant accounting issue in the method of determining actual liabilities for the "contingent" compensation established under the provisions of article XIII(4)c. Due to the method defined in the treaty, this will be a complex and potentially contentious accounting problem.

Under the provisions of article XIII(4)c, a payment of up to $10 million is due the Republic of Panama if revenues exceed expenditures in any one year. Amounts unpaid from previous years accumulate and become contingently payable in future years, again, based on the if revenues exceed expenditures formula. Although a definition of what constitutes revenue is probably self-evident and requires no further elaboration in the legislation, the definition of what constitutes an expenditure is unclear, not defined in the treaty, and in my opinion, requires specific attention in the legislation. Both H.R. 111 and H.R. 1716 include such a definition but I wish to offer some suggestions for consideration.

To preclude the possibility of placing the Commission in financial peril by condoning a one-dimensional cash approach to the determination requirements under article XIII(4)c, it is indispensable that legislation explicity provide that such determinations be made under the identical comprehensive basis of accounting for revenues and costs used in the computation of toll rates. If properly founded accounting, as I have recommended this morning, then indicates that revenues for a year exceed all costs, the Commission would, in fact, have the financial wherewithal to make a payment to Panama. This is comparable to a corporation paying dividends out of profits. Adoption of these recommendations would foster the objectives of the toll policy in promoting financial viability of the enterprise and would preclude any potential requirement to make a substantial payment on a contingent obligation without adequate resources.

In closing, I would like to correlate for you the objectives of financial viability for, and sufficient control over, the Commission. In my mind, the most successful controls will be those which promote self-sufficiency. A self-sufficient Commission would clearly achieve the objectives of financial viability. Self-sufficiency implies, however, adequate flexibility to adapt to change which, in turn, means less than absolute controls exerted over action alternatives. The dilemma currently facing you in this regard is analogous to the rhetorical question of how safe should an airplane be. Obviously, the safest airplane would be designed not to injure the passenger when it crashes. However, such an airplane would not fly and would therefore not provide very good transportation.

In any event, both management and the Congress will need a thermometer with which to measure the degree of the Commission's success in achieving financial viability. The thermometer I envision would be one which relates the Commission's ability to maintain the permanent capital base entrusted to it under the treaty and the implementing legislation through maintenance of at least constant canal service capacity.

Annual results in this regard would be measured in conformity with the enterprise accounting concept which should also be used to determine toll revenue requirements and contingent obligations to Panama under treaty article XIII(4)c.

Thank you, Mr. Chairman.

[The following was received for the record.]

SUBCOMMITTEE ON THE PANAMA CANAL
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

PANAMA CANAL COMMISSION: FINANCIAL AND ACCOUNTING POLICIES FOR VIABILITY AND CONTROL

MARCH 13, 1979

PREPARED STATEMENT OF
LEONARD J. KUJAWA
ARTHUR ANDERSEN & CO.

Introduction

My name is Leonard J. Kujawa. I am a partner in Arthur Andersen & Co., a certified public accountant, and a member of the American Institute of Certified Public Accountants and other professional societies and organizations. For the past 22 years my professional accounting experience has been concentrated on work for rate-regulated utilities and governmental organizations. Regarding the Panama Canal Company, I have been a consultant on various financial and accounting matters on a continuous basis since 1962. My work for similar organizations has included consulting work for the Suez Canal Authority, for the Atlantic-Pacific Interoceanic Canal Study Commission, which studied the feasibility of a replacement for the existing Panama Canal, and for the St. Lawrence Seaway Development Corporation.

Arthur Andersen & Co. is an international firm of independent public accountants. We serve approximately 50,000 clients and are among the largest public accounting firms in the world. Our relationship with the Panama Canal Company began in 1951, when we assisted in establishing the initial accountability for the property which was to be assumed by the newly formed Panama Canal Company. Of more immediate significance is the work we have done through continuous engagements for the Company from 1962 to the present time.

Following is a brief description of some of our work:

1. We have consulted with the Company and prepared extensive studies to determine the most appropriate method to assess tolls on individual ships for the use of the Panama Canal.
2. In 1974 and 1976 we assisted in the preparation of the Company's proposals changing the level of tolls to recover increased costs of operation.
3. We have assisted the Company in the computerization of many of its data processing activities.
4. We have assisted in developing its management reporting system for the purpose of controlling and reporting costs at all levels of management.
5. We have reviewed the Company's accounting policies with respect to cost recognition. Such reviews principally focused upon the adherence of such policies to generally accepted accounting principles, recognizing that the Company is similar to a rate-regulated public utility.
6. Under a 1978 contract with the U.S. Department of State, we prepared an Analysis of the Estimated Cash Requirements of the Panama Canal Commission, 1979-1983 to determine the financial impact of the Treaty on the Canal enterprise.

It is a pleasure to return to testify before this Subcommittee where, as you know, I have testified on several occasions on financial and accounting matters. Today, I would like to propose certain suggestions for your consideration in the development of implementing legislation which I feel are needed if the Panama Canal Commission is intended to be a self-sufficient, financially viable international public utility.

Factors Governing Financial Viability of the Panama Canal

In previous testimony before this Subcommittee, I have chronicled the financial success of the Panama Canal Company. This success is virtually unique in the annals of government operations. It has been the result of several synergistic financial phenomena. First and foremost has been the fact that the Panama Canal provides a service of real economic value for which users are willing to pay a price. Second has been the traffic growth, both in terms of numbers as well as size of ships, which through improved utilization of capacity enabled the Company to weather a continuous storm of ever increasing upward pressures on the cost of Canal service. These phenomena, coupled with strong management and sound financial policies, have enabled the Canal enterprise to maintain its financial strength in spite of significant fluctuations in the world's economic environment.

The Panama Canal Treaty of 1977, however, will result in the most profound financial changes ever faced by the Canal enterprise. These changes impose substantial additional financial burdens on the revenue stream of the Canal:

- Greatly increased payments to the Republic of Panama
- Divestiture of certain profitable operations
- Imposition of additional operating costs

These operating cost burdens are offset in part by the divestiture of certain operations which currently incur losses.

In addition to these easily perceived financial burdens, Article XIII(1) imposes on the Commission the requirement to turn over the Panama Canal to the Republic of Panama in the year 1999 " ... in operating condition and free of liens and debts, except as the two parties may otherwise agree ... " It thus appears that the Treaty imposes an obligation on the part of the Commission to replace its facilities as needed to maintain the Canal's operating condition. As a result, the Treaty will also impact the capital program of the Commission.

Will the Panama Canal Commission be financially viable after implementing these changes? Can tolls be increased sufficiently to produce additional revenues to absorb the increased costs? Will the long run financial viability of the Commission be imperiled because toll increases divert traffic which offsets the benefit of toll increases? This is the heart of the matter and before proceeding further I think it is necessary that you understand what, at least in my mind, constitutes financial viability.

For the Panama Canal Commission to be financially viable, its operating revenues must be sufficient to do two things. First, to cover all operating costs including those envisioned by the Treaty; and second, to provide for the replacement of plant and equipment when existing plant and equipment wears out. In this regard, at least in the near term, all indications are that financial viability can be achieved. This has been demonstrated by various studies of the effects of the Treaty on the Canal enterprise including our Analysis of the Estimated Cash Requirements of the

Panama Canal Commission, 1979-1983. The long-term outlook, however, is not as clear.

In the long term, while the Commission obviously cannot control the world's economic environment and the related effects on Canal traffic, its management can, given the proper legislative authority, effect all other aspects of Canal operations. Thus, just as the Panama Canal Company tailored its capital program scheduling to synchronize with available funds, just as it implemented cost austerity programs such as that of 1975 in response to traffic declines and just as it raised tolls when no other alternatives were available, so, too, can the new Panama Canal Commission manage its affairs to maintain viability.

However, the effectiveness of Commission management in this regard will be dependent upon three factors. The first such factor is legislative guidance. The Treaty implementing legislation can have a substantial effect on the ability of management to "manage". If unduly restrictive, the legislation could prove to be a deterrent to the incentive of management to maintain financial viability. In my opinion, the legislation should allow Commission management sufficient flexibility to use its authority to achieve that viability balanced with proper controls to assure that the legislatively mandated objectives are satisfied.

The second factor which will influence the potential for financial viability of the Canal under the Treaty is the soundness of the financial policies adopted by the Commission. Assuming appropriate legislative authority, these policies should be designed with the objective of appropriately recognizing all costs of Canal operations and providing a level of revenues which will be sufficient to cover such costs and to maintain constant service capacity by providing for the replacement of plant and equipment as related facilities are exhausted. I will elaborate on these points later in my statement.

The third ingredient to any recipe for Canal financial viability is that of the quality and skills of management. It is management who will be responsible for the Commission's compliance with the legislative guidance provided by the Congress, for the implementation of sound financial policies and for the day-to-day decisions in response to ever changing economic conditions. The ability of management to adapt to the flux of financial forces that affect the fortunes of the Canal enterprise, such as inflation, competition, changing traffic patterns, etc., will significantly affect the ability of the Commission to be financially viable. Regrettably, you cannot legislate performances, but are limited to establishing the structure and policies within which management will hopefully excel.

The financial viability of the Panama Canal Commission is vital to the interests of the United States, the Republic of Panama and world trade alike. Without financial viability, there cannot be a proper environment for the harmonious partnership envisioned by the Treaty. The Treaty implementing legislation will set the stage for that future.

The Effect of Legislation On Financial Policies

Due to the profound and extensive changes necessitated by the Treaty, virtually all of the financial policies currently followed by the Panama Canal Company will have to be subjected to extensive review and reconsideration to determine their propriety for the Commission. The fact that such policies have operated effectively and efficiently for the Company does not necessarily mean that they would be appropriate for the Panama Canal Commission. Just as the most significant of the Company's financial policies were formulated in response to legislative requirements, the Commission should be provided a sufficient legislative mandate to enable it to clearly understand its responsibilities as well as the intended objectives of the Congress with respect to the Canal. The more important financial policy areas in this regard include the following:

1. Financial controls.
2. Establishing accountability and control.
3. Recovery of the United States' investment in the Panama Canal.
4. Financing capital improvements.
5. Compensation to the Republic of Panama.

The balance of my statement is devoted to these areas and ways in which they can be dealt with in the implementing legislation regardless of whether HR 111 or HR 1716 is used as a basis for implementing the Treaties.

HR 111 and HR 1716 Distinguished

In past testimony, HR 111 has been characterized as providing for an appropriated fund agency, whereas HR 1716 has been described as providing for a corporate form. However, there are real differences and similarities between these two bills which are more complex from an accounting and financial standpoint than these broad generalizations may suggest.

Any proposed legislation for the Panama Canal must recognize that it is a business enterprise as distinguished from a government institution. The Panama Canal provides a service for which its users are willing to pay a price; in the past this has compensated the United States, as owner-investor of the Canal, for all costs of providing this service. In contrast are more typical government agencies such as, for example, the Veterans Administration, which is charged with providing service to individuals who have previously provided military service on behalf of the United States Government. Since the Veterans Administration generates little revenue on its own, its financial management is one-dimensional, i.e., control over a stream of expenditures.

As a business enterprise, the Panama Canal must utilize enterprise accounting as the foundation of a sound basis for financial management of its affairs. By enterprise accounting, I refer to a comprehensive accounting for all costs and revenues over a long term to measure financial performance. Enterprise accounting can accurately measure the performance of the skillful manager whose objective is to mix and balance all resources available to him to achieve the optimal financial results. This balancing and mixing involves such factors as:

1. Acquiring equipment for improvement or expansion. This requires a judgment as to the probability of a payback where the immediate increase in cash outflows reflected as depreciation costs over the life of the equipment is more than offset by the potential for additional revenue to be realized from the acquisition.

2. Replacing old equipment with new equipment to take advantage of advanced technology or to reduce maintenance costs on the old equipment. This requires a judgment as to the relative merits of the current cash disbursements recognized as depreciation costs over the life of the equipment and the reduced maintenance expenses and/or operating labor resulting from utilization of the improved technology.

3. Balancing of preventive maintenance costs, which are immediate expenditures, against larger maintenance costs later if you wait until the equipment breaks doen. The breakdown approach conserves cash currently but can result in a greater expense in the long term.

4. Substitution of equipment for manpower to achieve greater productivity. In this instance judgments are necessary regarding higher capital expenditures versus higher levels of labor costs over a period of years.

The importance of enterprise accounting is its multi-dimensional measurement of the financial impact of management decisions. Because it takes into consideration all of the economic resources, properly executed enterprise accounting best measures the financial success or failures of the entity.

Enterprise accounting is inherent in the corporate form of organization provided by HR 1716.

Although HR 111 provides for an appropriated fund agency, it also provides, through Section 234, for enterprise accounting. However, HR 111 imposes over the enterprise accounting process additional controls through the appropriation accounting process. The question is whether this additional layer of control is necessarily effective and I wish to discuss with you the factors which may assist you in reaching a conclusion on this matter.

Financial Control

We would all agree that financial controls over the affairs of the Panama Canal Commission are appropriate; but reasonable men can disagree as to the level of controls required. Unquestionably, HR 111 provides for potentially greater control than HR 1716. The question before you is how much control is appropriate in the circumstances.

Relevant to one's judgment as to the degree and type of control necessary is one's prognosis as to the likely financial success or failure of the Commission. As previously discussed, in the history of the Panama Canal Company there has been a pattern of financial success. This success is evidenced by the fact that no U.S. taxpayer funds have been required by the Company since it was organized in 1950. The avoidance of burdens on U.S. taxpayers for the remaining life of the U.S. management of the Panama Canal is, to me, similarly a desirable objective.

As I have also previously discussed, there is a basis for some optimism that the Commission can, if properly managed, avoid being a burden on U.S. taxpayers. It is not relevant, in my view, to compare the Panama Canal Commission at this juncture with other government-owned enterprises such as Amtrak and Conrail. When these entities were organized, there was a record of significant losses from past operations and there was no reasonable basis to anticipate that they could become self-sustaining. Thus the approach in the management of these loss-prone operations has been one of minimizing losses and the resultant burden on the taxpayer. In contrast, the emphasis on the management of the Panama Canal Commission should be one of providing sufficient flexibility to management to give it the opportunity to continue to be successful and thus not be a burden on U.S. taxpayers.

Based on my experience with the financial affairs of the Panama Canal Company, there are already in existence significant controls over its operations which would be continued under HR 1716. These controls include requirements for budgetary review and approval by OMB, for budget program approvals by the Appropriations Committees of Congress, for tolls to be set to recover all costs and for annual financial reporting with an audit by the General Accounting Office. The tolls setting and financial reporting requirements have not only promoted the Canal's financial viability but provided control because they expose the Canal's financial affairs to the "sunshine" of outside scrutiny. Such requirements should be continued because they serve the useful purpose of assuring the Congress that the financial affairs of the Commission are under control. In brief these would maintain the Commission as a fully accountable entity whose costs of providing service are financed by user charges. These concepts have three strong advantages for Canal users: (1) disclosure of results; (2) reliability of user charges; and (3) regulation.

Similar to the Panama Canal Company and Canal Zone Government, the financial books of the Commission should be open to the world. The costs for which it is held accountable should reflect generally accepted accounting principles, and its results of operation should be audited and made public. While both HR 111 and HR 1716 provide for audits by the General Accounting Office, neither requires public reporting of the results of such audits. I would suggest that a public reporting provision be included in the implementing legislation. From the self-interest point of view of the user, cost incurrence would then, at least indirectly, come under his scrutiny. This, in turn, places pressure on management to incur costs prudently.

The assurance that prices will be set based on cost gives the user confidence in the reliability of the price-setting process. He is assured that prices will be rationally set and he can therefore predict his future course of action with more reasonable certainty. Thus, through its reliability, the Canal is able to permit users to limit their risks and have a basis for long-range planning. This is a positive economic contribution and is essential for a service such as the Canal to be able to attract users.

Under the present law which provides the Canal pricing mechanism, toll changes require "notice and hearing" as provided by the Administrative Procedures Act. This is of value to the users of the Canal in that they are given the opportunity to comment on the proposed tolls and can plan for future costs of using the Canal. The requirement for notice and hearing on tariff changes is virtually universal in its applicability to public utilities. Since the user has a very real stake in proposed rate changes, I would suggest that the notice and hearing requirements for changes in either the level or method of assessing tolls be continued. Both HR 111 and HR 1716 would maintain these requirements, though the provisions of HR 111 provide greater details regarding the form of notice and hearing. Neither, however, provides detailed specific standards regarding the method of justifying rate changes. In my opinion the adoption of such standards would be appropriate. These could include requirements for actual and projected financial and Canal traffic data and analyses of projected changes in financial results. Also, neither HR 111 nor HR 1716 provides a requirement that the public record regarding proposed changes in tolls reflect conclusions reached on concerns expressed by interested parties in the rate proceedings. In my opinion, additional credibility could be brought to this process if such a requirement were provided for in the implementing legislation just as it is in most rate regulatory jurisdictions.

Historically management of the Panama Canal Company has itself also imposed financial controls on its organization by the very fact that it has been "bottom line" oriented. By this I mean that management has conscientiously made decisions to ensure that costs were kept within the bounds of revenue. This has required occasional changes in toll rates as well as changes in the level of costs being incurred so that reasonable results were obtained. An excellent example of this "bottom line" management has been the financial management effort led by Governor Parfitt to weather the adversities experienced in 1975. I would hope that the management of the Panama Canal Commission would be similarly goal-oriented and would arrange its financial affairs to be self-sufficient.

To me the adoption of a policy by the Congress which requires that the Commission be self-sustaining would provide the ultimate in control over the financial affairs of the Commission: that is self-discipline. In contrast, the consequences that would flow from additional appropriated fund control would be less flexibility and additional record keeping. HR 111 would require keeping supplemental records, the extent of which would depend on the extent of the additional controls imposed. For example, HR 111 could be implemented by providing for only one annual appropriation to cover all expenditures. Although this would technically achieve appropriation control, in substance it would accomplish very little. Accordingly, to achieve additional control, additional appropriations would need to be set, each identifying specific categories of cash expenditures to be controlled. As these categories of appropriation multiply, the complexity of the accounting expands at an exponential rate. In this day of the computer, such additional complexity and record keeping can be accommodated - but at a price. In my experience, such complex record keeping is tolerated only by utilities which need to report to regulatory agencies such as the Interstate Commerce Commission on a basis different than that used for internal management purposes. Thus, although feasible, this form of control would require considerable effort and time to implement.

Even more disturbing is that control by appropriations reduces the degree of forward-looking flexibility to manage the affairs of the Commission. This is true principally because the emphasis of the appropriation controls would likely be preservation of cash in the short term rather than optimum financial results in the long term. Of course, a short-term cash effect would be more important if cash conservation became a paramount objective because the Commission had become financially non-viable. The very real potential for the over-emphasis of the singular dimension of cash to the exclusion or de-emphasis of other dimensions is the flaw in the appropriations control approach which could cause uneconomic long-run financial decisions and reduce the flexibility of the manager to produce long-run optimal results. This in turn could jeopardize, in a vicious circle, the long-run financial viability of the Commission.

Establishing Accountability and Control

Obviously the Panama Canal Commission should be required to follow sound accounting in the management and reporting of its financial affairs. Sound accounting is generally recognized to be a body of knowledge referred to as "generally accepted accounting principles". These principles are substantially the same in current practice in the private sectors of both the United States and the Republic of Panama. In my opinion, the implementing legislation should therefore explicitly require that costs be determined under generally accepted accounting principles for purposes of accounting and rate making as well as in the specific determination of the contingent obligations to the Republic of Panama under Article XIII(4)c of the Treaty which I will discuss later.

As for the accounting policies to be based on such principles, the accounting best suited tc the needs of the Commision should be tailored to its unique financial requirements and economic environment. Of fundamental significance in evaluating alternatives in this regard is the objective that the Commission be financially viable in the long term. While accounting certainly cannot guarantee financial viability, it can, if properly applied, facilitate it.

The financial viability of the Canal enterprise is also dependent upon the process of setting a proper level of tolls. As established by law, the present policy regarding the tolls level is to set tolls to recover costs. Cost is interpreted to be a comprehensive accounting for all costs including the recovery of plant (capital) through depreciation charges. This policy therefore underscores the need to develop accounting policies which recognize the Commission's unique economic environment as well as conform with generally accepted accounting principles. The alternative to a cost recovery policy would be "what the traffic will bear". In my judgment, the continuance of the policy of assessing tolls to recover properly stated costs based on sound accounting should be continued.

The debates over the Treaty highlighted the need for financial viability to avoid making the Commission a burden on the United States taxpayer. Although long-term determinations of financial viability for any enterprise are at best exceedingly difficult, projections over a five-year horizon have demonstrated the Commission's potential to satisfy its cash requirements from self-generated revenues. Our Analysis of the Estimated Cash Requirements of the Panama Canal Commission, 1979-1983 is relevant in this regard. If desired, a copy of this report is available for the record.

Based on the Commission's need for accounting policies which not only adhere to generally accepted accounting principles but also recognize its unique economic environment as well as facilitate its financial viability, I have concluded that the Commission must have a method by which to measure the economic consumption of the resources conveyed to it and a pricing policy which recovers this consumption. Many of the facilities conveyed to the Commission will require replacement over time so that it can continue to provide service; thus the accounting process must be structured to measure this consumption and report the results thereof. In my opinion, the system of depreciation currently employed by the Company and utilized in the determination of toll revenue requirements for rate-making purposes will not suffice for this purpose principally because that system was never intended to provide such a measure.

The intent of the present system is to allocate original cost over the estimated service lives of all property in use. From an economic standpoint, this system does not recognize the fact that original cost is generally not indicative of the level of capital required to be maintained in order not to erode service capacity. In the case of the Commission, this level would be at least equal to the value of the property it will assume from the Company which will require replacement in the long run. Property not to be replaced, such as excavations and items to be transferred to the Department of Defense and to the Republic of Panama, will, from the standpoint of cost, have no economic relevance to the Commission.

To understand the magnitude of the investment in the Panama Canal Company, the amounts presently shown on its books must be stated in terms of today's dollars. This can be readily done using Department of Commerce indices. At today's price levels the Panama Canal Company has $5.1 billion invested in property, plant and equipment, of which approximately $3.5 billion need not be replaced because it represents the costs of such assets as excavations, land fills and embankments which will not need to be physically replaced. In addition, approximately $700 million of plant is to be transferred to the Republic of Panama and the Department of Defense as a result of the Treaty. The remaining approximately $900 million represents the cost of assets to be conveyed to the Commission which must be replaced in the long run to maintain financial viability. Of that amount, the accumulated depreciation at current price levels would be approximately $500 million, leaving a balance of $400 million: the fair value, net of depreciation, of property, plant and equipment conveyed to the Commission which must be maintained at a constant level to ensure viability. On an annual basis, this would require the recovery of about $23 million of depreciation.

What I am suggesting to you is that the implementing legislation recognize the need and provide for a clean cutoff between the affairs of the Panama Canal Company and the Panama Canal Commission. This would be similar to what is commonly referred to in the financial world as a financial reorganization. Obviously some effort would be required to revalue the facilities in terms of today's price levels but in my judgment this effort is fully justified by the results which would be achieved in terms of the enhancement of the potential for financial viability of the Panama Canal Commission.

These are not just bookkeeping niceties; the Commission's financial reporting should have meaning and significance to the Congress, to the Republic of Panama and to the Canal users. Its financial statements should communicate whether the enterprise is maintaining its financial viability or whether it is in financial difficulty. In my opinion, the Commission would realize a profit or surplus only if its tolls exceeded all of its costs including the aforementioned consumption of capital necessary to sustain itself. This capital consumption would be properly measured under the method of accounting I have outlined for you today.

To accomplish this accounting, HR 111 would need a change in Section No. 234, requiring that the property conveyed to the Commission be valued at its fair value, used and usable, in providing service to world shipping. A similar change is necessary in Section No. 68 of HR 1716. In addition, there is a need to state that the property be depreciated over its service life for purposes of both accounting and setting tolls. The depreciation life for assets is not stated in either HR 111 or HR 1716 but in my opinion it is necessary because absent such a statement accountants would normally depreciate the assets over a period not longer than the life of the entity which, in the case of the Commission, would be through 1999.

Based on this method of accounting and the provisions of HR 1716, the essentials of the opening balance sheet of the Panama Canal Commission would thus appear as follows (current assets and liabilities have been excluded):

BALANCE SHEET

Plant and Equipment...	$400,000,000	Permanent Capital...	$400,000,000

This capital is serviced by recognizing approximately $23 million of cost annually through the depreciation of plant and equipment over their service lives and recovering that amount through tolls.

It is recommended that the capital accounts of the Commission, at the outset, be consolidated without regard to the separate accounts maintained by the Company. I recommend this treatment because at the time that its doors are opened, so to speak, the Commission will have been provided with a permanent capital base and should have no reason to distinguish or identify any components in this permanent base.

To accomplish additional control it may also be appropriate to establish in the legislation a requirement that the funds obtained through depreciation, determined as recommended, be used only for purposes of replacing or improving plant and equipment. In combination with the accounting recommended, this would provide additional legislative control by assuring that the Commission's use of funds from depreciation be limited only to replacing or expanding plant. Since such plant replacement is essential to maintain viability, the reservation of such funds would encourage additional management self-discipline.

Recovery of the United States' Investment in the Panama Canal

Under HR 1716, amended for the changes I have recommended, the Commission would account for its assets and preserve the related $400 million in permanent capital through the recovery of $23 million in annual depreciation. This same arrangement would be valid as an amendment to HR 111. In addition, however, over and above the preservation of permanent capital, HR 111 contemplates the repayment as debt of the investment of the United States in the Panama Canal and payments of interest on that investment.

It is important that a clear distinction be drawn here between a requirement for preservation of capital and one for repayment of debt. As any businessman versed in finance well knows, business enterprises require a level of permanent capital to sustain their operations. In the business world this is generally in the form of common stock investments. However, whether a business enterprise is owned by shareholders or the government is irrelevant to the need for permanent capital. The Panama Canal is a business enterprise and as such requires a permanent level of capital to sustain itself. This capital has been provided by the U.S. Government and, under the provisions of the 1950 legislation establishing the Panama Canal Company, there has been no requirement for its repayment, although an accounting has been required to assure proper maintenance of this permanent capital. To me, it is not surprising that the Panama Canal Company, over its history, returned only $40 million of its capital to the U.S. Treasury and found it necessary to retain the remainder for the replacement and expansion of its plant.

In considering the financial policy decision that you must make between HR 111 and HR 1716 in the matter of repayment of capital, I think it important that you keep in mind the Commission's need for an equivalent to the common stock investment found in the business world.

The obvious result of requiring the Commission to pay into the Treasury an amount representing amortization of the investment of the United States as debt and interest on the unpaid balance would be significantly higher toll revenue requirements. This not only raises the question of whether this is fair and equitable to Canal users but also whether this is a financially feasible objective. There is in my mind a serious question as to whether tolls can be increased by such an increment over the next 20 years while at the same time allowing the Panama Canal Commission to remain sufficiently viable to recover its other financial requirements. The imposition of such an increment of cost would therefore impose significant risks on the Commission.

The requirements of HR 111 can be illustrated by the following balance sheet for the opening of the Commission:

BALANCE SHEET

Plant and Equipment...	$400,000,000	Permanent Capital...	$400,000,000
Other costs being amortized..........	339,000,000	Debt to U.S.	339,000,000
Total.................	$739,000,000		$739,000,000

It is important to observe that in this case the debt that must be repaid to the U.S. is over and above the permanent capital requirements of the Commission. This debt would be extinguished by annual payments of approximately $16 million recognized in the accounting and rate-making processes by the amortization of "other costs being amortized" of $339,000,000. If interest is also payable, the initial annual requirement of some $20 million would decline as the principal is reduced through annual payments. At the same time recovery of the $23 million of annual depreciation of plant and equipment would be fundamental to the financial viability of the Commission. In this regard then, the aggregate annual charge to toll payers under HR 111 would be $59 million compared to $23 million under HR 1716. From the standpoint of the toll payer, however, the higher requirement may be unfair because it causes a doubling up of the costs for which he must compensate the Canal enterprise. This double-up results from the change in the form of the permanent capital formerly implicitly provided by the United States through its investment to a debt obligation and the requirement to maintain a permanent capital base to sustain the financial viability of the Canal. This double-up is analogous to paying rent on a house and at the same time making the mortgage payments. There is, of course, a persuasive counter argument to excluding the entire effect of this "double-up" from toll revenue requirements because a resultant burden would fall upon the U.S. taxpayer to the extent that he, through the U.S. Treasury, would receive neither return of nor return on the U.S. investment which in the final analysis was financed with tax dollars.

Financing Capital Improvements

As I mentioned earlier, Treaty Article XIII(1) appears to impose an obligation on the Commission to replace facilities to maintain the Canal's operating condition, but there is no obligation as such to make improvements or expand the Canal.

Historically, the Panama Canal Company has financed its replacements and improvements through reinvestment of both United States capital and net earnings. The Company recovers through tolls the United States' investment in the Canal by depreciating all of its assets over their estimated service lives and including this depreciation cost in toll revenue requirements. By law the Company is permitted to retain the funds received through this process and, except for the $40 million returned to the United States Treasury in the form of dividends, it has used these internally generated funds for capital expenditures. Thus, the United States' willingness to forego the repayment of its capital has enabled the Company to replace and improve facilities. A second source of capital has been net earnings. Even though the legislative tolls formula provides only for a level of tolls to recover costs, as a practical matter, revenues have generally modestly exceeded costs and therefore net earnings have been generated. These net earnings have generally been plowed back into the Canal; that is, they have been used to finance capital improvements for the benefit of the users of the Canal.

Similarly, the basic cash flow from toll revenues of the Panama Canal Commission must be sufficient to make replacements as needed. The accounting and rate-making processes required to achieve this result were explored earlier in my statement.

A matter not developed in the Treaty is the manner in which capital improvements and expansion are to be financed. This will require the type of legislative authority provided in the current drafts of implementing legislation to clarify potential ambiguity related to the contingent payments to the Republic of Panama under Treaty Article XIII(4)c. (The existence of this Article in the Treaty in effect precludes the Commission from retaining any revenues in excess of costs, thus stripping the Commission of an important means of financing capital which was utilized by the Panama Canal Company.) One possibility for financing a moderate level of capital improvements, which appears to be compatible with Article XIII(4)c, would be to grant the Commission the authority to impose additional tolls in the form of a surcharge to finance such improvements. Both HR 111 and HR 1716 provide sufficient authority to impose a user charge to finance improvements. If the Commission chose this method of financing moderate improvements, the resultant receipts obviously should not be considered "surplus" under the provisions of Article XIII(4)c, but should be legislatively designated as capital funds or the intended result would be frustrated. HR 111 would require a provision in Section 412 to accomplish this result.

You have requested that I offer suggestions for possible controls over the surcharge authority of the Commission. Controls could be imposed by maintaining the rate-regulated status of the Commission through the following:

1. Establish a ceiling on surcharge collections to ensure that only moderate improvements are financed in this manner. A limit as a percent of toll revenues would be self-adjusting for inflation.

2. The imposition of a surcharge should be specifically addressed in the administrative aspects of the tolls-setting process.

3. The surcharge should be imposed as a separate component of the toll rate and accounted for not as revenues but rather as a liability to rate payers until invested in improvements, at which time cumulative collections could be classified as what is referred to in the Federal Energy Regulatory Commission Uniform System of Accounts as "contributions in aid of construction". Depreciation of assets financed in this manner could therefore be excluded from future toll revenue requirements if that were deemed appropriate.

4. The surcharge should be clearly tied to specific project(s).

5. Imposition of the surcharge should expire when the budget amount for the related project(s) has been collected from rate payers.

6. Any amounts not expended for such approved project(s) should be refunded to rate payers through a prospective reduction in toll rates.

Major Canal improvements, on the other hand, would require substantial amounts of "front-end" capital in a compact time frame such that it would not likely be available from Canal tolls. In such circumstances the Commission would have to seek financing from outside sources in the form of loans from the host and/or user countries or from international financial organizations such as the World Bank. The borrowing authority provided by HR 1716 is an example of a source of outside capital. In any case, the disciplines of external capital markets could be brought to bear on the deliberations on the relative merits of a proposed major Canal expansion or improvement.

Compensation to the Republic of Panama

Previous witnesses have discussed in detail the amount of the compensation to be received by the Republic of Panama. A significant financial problem to be dealt with, of course, is financing this magnitude of compensation through tolls. Another significant issue is the method of determining actual liabilities for the "contingent" compensation established under the provisions of Treaty Article XIII(4)c. Due to the method defined in the Treaty, this will be a complex and potentially contentious accounting problem.

Under the provisions of Article XIII(4)c, a payment of up to $10 million is due the Republic of Panama if "revenues exceed expenditures" in any one year. Amounts unpaid from previous years accumulate and become contingently payable in future years, again based on the "if revenues exceed expenditures" formula. Although a definition of what constitutes revenue is probably self-evident and requires no further elaboration in the legislation, the definition of what constitutes an "expenditure" is unclear, not defined in the Treaty, and in my opinion requires specific attention in the implementing legislation. Both HR 111 and HR 1716 include such a definition but I wish to offer some suggestions for consideration.

To preclude the possibility of placing the Commission in financial peril by condoning a one-dimensional cash approach to the determination of requirements under Article XIII(4)c, it is indispensable that legislation explicitly provide that such determinations be made under the identical comprehensive basis of accounting for revenues and costs used in the computation of toll rates. If properly founded accounting then indicates that revenues for a year exceeds all costs, the Commission would in fact have the financial wherewithal to make a payment to the Republic of Panama. This is comparable to a corporation paying dividends out of its "profits". This similarity is further honored in the provision of HR 1716 which stipulates that before such payments to Panama are made, the Board of Directors must determine that the payment would not jeopardize the cash position of the Commission. Adoption of these recommendations would foster the objectives of the toll policy in promoting the financial viability of the enterprise and would preclude any potential requirement to make a substantial payment on a contingent obligation without adequate resources. I also feel that an audit of the Commission's financial position and results of operation should be conducted prior to making any payments under Article XIII(4)c.

Conclusion

In closing, I would like to correlate for you the objectives of financial viability for, and sufficient control over, the Commission. In my mind, the most successful controls will be those which promote self-sufficiency. A self-sufficient Commission would clearly achieve the objectives of financial viability. Self-sufficiency implies, however, sufficient flexibility to adapt to change which in turn means less than absolute controls exerted over action alternatives. The dilemma currently facing you in this regard is analogous to a rhetorical question of how safe should airplanes be? Obviously, the safest airplane is one that does not fly. Such an aircraft would, however, provide a very poor means of transportation.

In any event, both management and the Congress will need a thermometer with which to measure the degree of the Commission's success in achieving financial viability. The thermometer I envision would be one which relates the Commission's ability to maintain the permanent capital base entrusted to it under the Treaty and implementing legislation through maintenance of at least constant Canal service capacity. Annual results in this regard would be measured in conformity with the enterprise accounting concept which should also be used to determine toll revenue requirements and contingent obligations to the Republic of Panama under Treaty Article XIII(4)c.

Thank you, Mr. Chairman. I'd be happy to answer any questions you might have.

Mr. HUBBARD. Thank you very much, Mr. Leonard Kujawa of Arthur Andersen & Company. I appreciate your testimony with its vital information.

I apologize for not being here for much of your testimony. I was in Louisville, Ky., and flew back this morning. I came straight from the airport to chair this subcommittee.

At this point, could we pause just a moment to have the staff roll that table forward. It is not that we can't hear you, we are trying to provide more seats for those who are standing.

Our second witness is Mr. Philip L. Steers, Jr. Mr. Steers was Financial Vice President of the Panama Canal Company for over a generation. His knowledge of the day-to-day financial requirements of the canal organization is unparalleled.

Like Mr. Kujawa, Philip Steers presented brilliant testimony before this subcommittee in 1977. We are fortunate to have you with us again today, Mr. Steers.

At this time, would you proceed, Mr. Philip L. Steers, Jr.

STATEMENT OF PHILIP L. STEERS, JR., FORMER FINANCIAL VICE PRESIDENT, PANAMA CANAL COMPANY

Mr. STEERS. My name is Philip L. Steers, Jr. I am the former Financial Vice President of the Panama Canal—Panama Canal Company and Canal Zone Government. I retired in January 1977 after serving for a period of more than 20 years as the chief financial officer. My responsibilities encompassed the entire spectrum of financial and related activities.

I was, in large part, responsible for developing the financial organization, the accounting, reporting and budget systems and all related policies brought about by the Panama Canal Reorganization Act of 1950 and for implementing the financial aspects of the 1955 Treaty with the Republic of Panama. It is from this background of experience that I appreciate the opportunity to share my views on the proposed legislation.

At the outset, let me state that the impact of the treaty of 1977 goes far beyond any past reorganization by treaty or otherwise. It is a new ballgame, so to speak, and one that requires imaginative and specific legislation. It is my view that the interest of the United States, the Republic of Panama and world shipping would best be served if the Panama Canal Commission be a financially viable entity. It is toward that end, financial viability, that my comments are principally directed.

In addition, my views reflect a concern that the implementing legislation be adequate, both in prescribing the financial guidelines and controls. They further reflect my experience, in over 30 years of foreign service, from which I learned that the international handshake of cooperation and friendship, as well as agreement, is more often than not, a facade. I know that unilateral interpretations will differ materially in the apparent bilateral understanding.

As a general observation, the Murphy bill meets my standards much more closely than does the administration bill. I find the Murphy bill to be logical and well written. It reflects the experience and knowledge this committee has gained from its years of oversight of Canal operations. In contrast, the administration bill attempts to "piggy back" existing statutes and bypasses problem areas. While generous in granting autonomy, it is weak in providing control.

The Murphy bill provides a new legislative start and I recommend that the accounting also receive a new start, similar in principle to that of the Reorganization Act of 1950. The financial operations of the Commission should be conducted within acceptable accounting principles and procedures, whether it be a corporate or appropriation type entity. The accounting under either concept should be structured to reflect the public utility nature of the Canal's operation. For example, the basis for and evaluation of tolls should flow from the accounting records.

The basic conflict between the two bills is whether the Commission is to continue as a government corporation or revert to the concept of an agency, subject to the same fiscal and administrative controls which are applicable to government agencies.

I believe it is generally recognized that the corporation form provides greater flexibility to the corporate managers and generally weaker control by the Congress. To illustrate: The Congress simply approves the Corporation's budget and what oversight there is generally comes after the fact, and subject to the initiative of the legislative committee.

Of course, the Commission will be audited by the GAO, as it should be, but then again, that is an after-the-fact action. The door could only be locked after the horse is stolen.

In contrast, the Commission operating as a government agency must be concerned with additional congressional participation. The Congress would be directly involved in approving programs through budget authorization legislation and then, of course, in the appropriation of funds. The legislative and the appropriation committees would be more directly involved in the financial process.

From an accounting point of view, the agency concept presents no problems, even though, for example, the canal has no control over its work load. Its expenses and revenues are subject to the uncontrollable ups and downs in canal traffic. If this is so, it may be asked, then how could the Commission be sure that current appropriations would be sufficient to cover increased variable expenses due to a major upward increase in traffic?

In that situation, variable expenses might well exceed funds appropriated. To argue that such a situation defeats the appropriation agency concept is misleading and in error. This is so because, first, the Panama Canal has operated successfully as an appropriation agency prior to 1951; its record of forecasting revenues and expenses from '51 has always been good; such contingency is covered by the provision of an emergency fund, and; in addition, the Budget and Accounting Act covers adequately such situations.

Do not overlook the fact that, for a corporate agency, the opposite situation would present a problem. A serious downturn in traffic means loss of revenues, yet funds must be provided to meet expenses which lag well behind any fall in revenue. So neither is exempt from the effects of significant variations in traffic.

The accounting requirements of an appropriation agency do not present any difficulty in; for example, providing the essential cost justification to evaluate and fix tolls. Under the present accounting system, the accounts of the Company are maintained on both an accrual accounting basis—common to corporate accounting—and that needed for appropriation budget requirements.

The Canal Zone Government is an appropriation agency and its accounting is on both an accrual and appropriation basis. To argue that two sets of books would be necessary, too is misleading. The accounting and budgeting are computerized, and the interplay of accounting for corporate and government agency is there now, simply handled through computer programs and accomplished in moments.

It may well be within the interest of the Commission to have the assurance afforded by the agency type entity even at the expense of additional congressional participation. The assurance is simply that funds will be available to meet its expenses even though there may be significant variations in traffic.

Historically, the Panama Canal Company demonstrated the effectiveness of a government corporation—in fact, it is a case study of success. However, it would be wrong to believe that the same success will hold for the future.

The Company has been blessed, until recent years, with an extended traffic growth that outpaced inflationary increase. It has not been burdened with heavy political costs. It has been able to retain the excess revenues which it has plowed back into capital programs.

The Commission, however, will be faced with a canal having reached economic maturity—though for the moment it is benefiting from transit of North Slope oil. The Commission will be burdened with heavy political costs including one that requires payment of excess revenues to Panama, funds which heretofore had been channeled to the capital program.

The Commission will experience fund shortages with any downturn in traffic, which I am sure will lead to conflict with the Congress when funds are requested to meet operational requirements.

The pivotal factor as to whether the Commission should be a corporation or an agency depends on which one the Congress believes best protects the interest of the U.S. Government and that of the taxpayer through the life of the treaty. I believe the provisions of the Murphy bill is the only alternative in the present circumstance.

The Panama Canal is about to embark on an era where financial and related matters will dominate. I, therefore, suggest that control of financial activity be strengthened at the operating level. To this end I offer the following for your consideration—that the legislation provide for a chief financial officer, similar to that of chief engineer, as provided for in section 104 of the Murphy bill.

The provision for the position of a chief financial officer will assure that the financial affairs of the Commission are supervised and reported upon by a competent individual. This officer should be there on the ground, participating in the financial aspects of policy development, setting accounting policy and procedures. On his shoulders would rest the integrity of financial affairs—in a sense, a financial watchdog.

Examine the provisions of both bills. Note the number having financial significance in contrast to those having engineering significance. The financial affairs of the Commission should not be placed in a secondary position so long as the United States is responsible for its financial well being.

The tolls formula proposed in the two bills vary significantly and it is here I believe there should be extreme care, understanding and clarification of what is intended to be set forth in the legislative record. Of the two formulas, I urge favorable consideration of that contained in the Murphy bill. It obviously reflects considerable understanding of accounting and ratesetting procedures. It is about as specific as legislation requires. However, I believe the legislative record might well clarify some points.

The Murphy bill provides for all costs whereas the administration bill provides for all anticipated costs. I am not sure I understand the subtlety intended by the word "anticipated", but it does bother me. In my view, the end objective of the toll rate is to recover all costs, not all anticipated costs. The words "all costs" is the appropriate terminology.

The Murphy bill provides for interest on the United States Government's investment as one element of cost to be recovered in the toll rate. In contrast, the administration bill provides instead for repeal of the payment of interest in order to balance the policy objectives of keeping the Commission self-sustaining and avoiding an uneconomic increase in tolls.

I gather from this rationale that the Administration is concerned about the Canal's financial viability. With this in mind, I am inclined to repeat a view expressed before this committee on December 1, 1977, during its hearings on the financial ramifications of the proposed treaty.

Why, I wonder, is it all give on the part of the United States? Should not Panama be called upon to consider waiving some of the costs it extracts under the provisions of the treaty toward keeping the Commission self-sustaining and avoiding an uneconomic increase in tolls as evidence of its real participation in assuring the efficient and reliable operation of the canal?

Let me recall that the main purpose of the treaty of 1977 is said to serve the interest of world peace and world commerce. Should not the Republic of Panama be challenged to assume her responsibility toward that goal? It seems to me that by now we should know that one cannot build foreign policy on the sands of giving.

It does not generate respect for nor further the interests of the United States. It will be interesting to watch the increased demands placed on the United States by Panama under this treaty. To date, we have only seen the tip of the iceberg.

In my view, interest on the U.S. Government's investment, so long as there is an investment, is a proper cost of doing business and it should be a factor for recovery in the toll rate. It, further, should be reflected as a cost before computing any contingency payment.

The administration bill provides for amortization of use rights in its toll formula. If the administration's formula is adopted, clarification certainly is needed as to what those use rights are. The only clue provided refers to use of housing. What else is included?

Would it, for example, include use of the locks, buildings, et cetera? With respect to housing, the use rights imply that the

Commission would not be the owner of the facility, but the user. I would presume that rent would be paid by an employee for the use of the house.

It follows then, that the use right cost would be a cost recovered in rent in lieu of depreciation. If this be so, why would that cost be included in toll rates? What are the use rights affecting toll rates? They should be set forth in the record.

The administration bill further provides that in determining the rates of tolls, there may also be taken into account unrecovered past costs, et cetera. I am bothered by the words "there may also". I have no quarrel if the word "may", when used in this statute, means must. Should it mean otherwise, that is, it is permissive, then I suggest rewording.

Both bills make provision for including in toll rates a factor that would provide funds for the capital program. Some technique such as this must be used to generate capital funds in that article XIII(4)(c) of the treaty makes it very difficult to generate capital funds from operations. It provides that any surplus triggers an additional payment to Panama.

I suggest that a surcharge on the toll rate may be a better mechanism for generating capital funds. A surcharge would provide flexibility and simplicity without being wedded into the toll rate. I further sugggest that changes in the surcharge be accomplished through the annual budget process, rather than through the administrative procedure process.

To include a provision for the capital program within the toll rate presents problems. For example, it means that x percent of any tolls collected are to be set aside. The percent, I assume, is the ratio of the amount of the provision for the capital program to the total base on which the toll rate was established.

That percent would remain constant until the toll rate is changed. Toll rates, hopefully, are set to minimize the frequency of change so that the rate would remain unchanged for a number of years. I question, therefore, the desirability of going through the administrative procedures to change toll rates because the capital requirements have changed.

There is also a further complication. What happens if the President, in approving a new toll rate, exercises his perogative, for reasons other than cost, and approves a rate different from that recommended?

If toll rates are to provide funds specifically for the capital program, controls should be established to insure that the cost of depreciable assets is recovered only once—either before the acquisition or after, depending on the source.

Depreciation also provides a cash flow that may be channeled to plant replacement and improvement. Two questions come to my mind as to the depreciation of the capital assets. First, should those assets be depreciated over their useful service life or over the life of the treaty, whichever is shorter? Second, should depreciation on those assets transferred to the Commission be calculated from an asset value based on current price levels?

With respect to the first question, it is my view that all assets subject to depreciation be depreciated over their useful life even if that life extends beyond December 31, 1999. To do otherwise, I believe, would be unfair to the tolls payer and violate the principle that the canal is a going business.

In the years just prior to my retirement, I spent considerable time developing financial statements for the Company in which the values stated were expressed generally in terms that gave recognition to inflation—reference is made to the 1976 and 1977 Annual Reports of the Company.

From an economic point of view, such an approach gives recognition to the erosion of the dollar. The depreciation on capital assets valued on that basis would provide a cash flow much closer to replacement cost of the assets. If there is to be a fresh start in the accounting process, I suggest serious consideration be given to valuing the transferred assets at current price levels. To do so would provide an important source of funds for the capital program and work toward the Commission being viable.

A provision to authorize the Commission to borrow funds from third parties for major capital programs, I believe, would be helpful and an important tool toward self-sufficiency. It would further eliminate the need for the United States to make further investments in capital improvements.

In summary, I recommend that capital funds be provided from the following sources: Funds generated through canal operations from depreciation and, if necessary, a surcharge on tolls; borrowing from third parties—excluding the U.S. Government—and, from the Republic of Panama, should the Republic wish to do so. I believe it would be prudent for the Republic to consider financing capital programs that would provide improvements to the canal that would extend beyond the year 2000.

Just prior to my retirement, I established a special task force assigned the responsibility of inventorying assets and liabilities that were to be transferred, discontinued or to continue in operation. This inventory should be in process and must cover all areas, not, for example, just those being transferred to Panama. It must include those transferred to U.S. Government agencies and to the Commission itself.

The 1950 legislation prescribed the method of valuation of facilities being transferred. I suggest, too, that the current legislation provide for the inventory and method of valuation.

There must be an orderly and controlled liquidation with an accounting for the transferred assets, for to do otherwise could and will lead to misappropriation and accusations of impropriety.

All transfers of Canal Zone Government assets, I suggest, be made at book value. These assets are non-revenue producing in that they are governmental in nature and, I believe, it would be inappropriate to place any higher value on the transferred asset.

In transfers to U.S. Government agencies, I seem to recall that the Comptroller General requires that such transfers be at book value.

On transfers to the Republic of Panama of Company assets, I believe historically they have been made both at market value and at book value. In recent years I again seem to recall that book value was used, whereas I believe those assets transferred under the 1956 treaty were valued at market value and the U.S. Government's investment reduced in like amount. In the circumstances, I suggest book value for nothing is accomplished by using higher values.

Transfers of assets to the Commission is important in that (1) the value will have a direct relationship to depreciation costs included in toll rates and (2) fix the U.S. investment.

As I advocate a new financial start, I suggest that the assets be transferred at current price levels. I would modify that for I agree with the approach that Mr. Kujawa suggested in his letter in which the canal excavation, for example, would not be revalued.

This approach, of course, increases the depreciation cost to be recovered in toll rates. However, it may reduce or eliminate the need for any provision in the toll rate for capital programs. As I see it, one way or the other, the shipper will pay the end cost of the capital program.

As to the U.S. Government's investment, this only becomes significant if (1) it is to be repaid or (2) if interest is to be paid thereon. Assume either of these two possibilities, I would suggest that under the new start concept, the interest bearing U.S. investment reflect the net book value of the assets transferred and an appropriate account be established for added value due to replacement cost valuation. If the assets are to be transferred without revaluation, I suggest using net book value.

With respect to the administrative procedures to be followed to effect a change in toll rates, the provisions of the Murphy bill are complete and provide the essentials for protecting the taxpayer and other interested parties. In contrast, the administration bill appears to ease the ability of the Commission to secure toll increases at the expense of interested parties.

The Murphy bill provides in detail for the specifics of appointment and duties of the Consultative Committee. In contrast, the administration bill simply provides that the President will designate and the Secretary of State will coordinate the participation of the representatives of the Consultative Committee.

The administration bill completely ignores this problem area in leaving its mode of operations apparently to somehow evolve. The drafters of the Murphy bill deserve commendation for facing up to this provision of the treaty and developing the guidelines and procedures that allow the Consultative Committee to be a productive contributing force through their respective governments to canal operations.

The Canal Record of December 1978—a periodic publication of the Panama Society of Florida—contains a list of 23 subcommittees composed of representatives of the Panama Canal and the Republic of Panama. These subcommittees were formed for the purpose of planning and developing work programs and preliminary plans for implementing the treaty.

The list was interesting to me for I noted that no committee was established that would coordinate and determine how the transfer would be made of the going accounting process for those functions to be transferred.

The computer system of the Panama Canal is one of the most complex, integrated and sophisticated in the data processing field anywhere in the Americas. The accounting is so integrated that there is no way that one can pull out, so to speak, a program package and say this is the terminal operation; this is the port operation; or, hospital operations.

This means that a controlled plan must be developed to insure the orderly transfer by the Company and orderly receipt by the Republic or a military agency of the accounting and related records.

If timely recognition is not given to this, I am as certain as I am sitting here that the Commission will be requested, if the Company already hasn't been, to continue the computer service for some of the facilities to be transferred. The committee may wish to pursue this possibility further. I question the desirability of the Commission being a computer service bureau.

I have been asked how I would visualize the balance sheet of the Commission on October 1, 1979. I do not have sufficient detail of the planning aspects to implement the treaty to do justice to such a request. I, therefore, would accept the views of Mr. Kujawa of Arthur Andersen & Co., who is familiar with current happenings on the treaty and is also testifying before this committee today. Having worked over the years with Mr. Kujawa, I believe there would be little, if any, difference in our format.

I pose the question: Just what, in fact, will happen to Commission management at the close of business on December 31, 1989? On that day, the U.S. Commissioner and the Panamanian Deputy Commissioner clear their respective desks preparatory to exchanging offices and titles on the following morning. Will similar changes occur at the lower echelons? Will, for example, the Chief Engineer exchange positions with his Panamanian Deputy? I believe this question should be resolved now as to whether or not it may be in the best interest of the United States to insure that U.S. citizens retain certain positions throughout the life of the treaty.

I suggest the position of chief financial officer and that of the general auditor be U.S. positions so long as the budget of the Commission must pass through the U.S. Congress.

The treaty provides under article XIII, paragraph 1, that upon termination the Republic of Panama shall assume total responsibility for the management operations and maintenance of the canal, which shall be turned over in operating condition and free from liens and debts, except as the two parties may otherwise agree.

This article appears to require that all debts arising from operations must be liquidated by the United States at the time the Republic of Panama takes full control of the canal. As the canal is an operating entity, a going business, it is natural that through its day-to-day business activity it incurs debts; supplies are purchased; salaries are accrued.

These debts should not become a liability to the United States but should be included as part of the going business transferred to Panama. On that day the Republic should receive the assets and liabilities and related claims, not just the assets. I recommend that the legislation provide for this end transfer.

As a closing observation, it is obvious to me that the administration's bill is directed to giving the Commission a wide degree of autonomy, almost creating a washing of hands effect. Certainly, a corporate structure will speed up the loss of effective control by the United States. This, frankly, concerns me.

The management pattern of the Commission with United States and Panamanian citizens in high responsible positions serving as deputies to one another has within itself a breeding ground of conflict and controversy. Loyalties of employees will be divided, yet operating efficiency and financial viability is the responsibility of the United States.

I would expect the Panamanian to be aggressive in protecting their country's interest. I expect no less from the American. This is not the time in the foreign affairs of our country to further weaken our position in the Panama Canal.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Mr. Steers.

Questions first, please, for Mr. Kujawa.

Regarding depreciation, several years ago when you appeared before the subcommittee you argued the case for depreciation of the Panama Canal excavations, fills and embankments. Page 18 of your statement seems to indicate that you do not believe these assets should be depreciated by the Commission.

What has changed your mind on this matter?

Mr. KUJAWA. If the accounting of the Commission was to follow the accounting of the Panama Canal Company as a continuation of the affairs of the Panama Canal Company, then my view would be that the depreciation of the excavations should continue. However, I suggest in my testimony that there be a termination of the accounting of the affairs of the Panama Canal Company and that a new basis of accounting be established for the Panama Canal Commission. The accounting I suggest for the Commission is based on those assets, plant, and equipment, that must be replaced over time to maintain viability.

I don't believe that there can be any controversy from any source that the Panama Canal Commission must have the wherewithal to replace assets to maintain service capacity. So I suggest that the accounting, then, reflect the consumption of those assets. That consumption, of course, is measured in the accounting process through something we call depreciation.

So I suggest a different form of accounting for the Commission than for the Company, and that is why my conclusions are different regarding that particular item.

Mr. HUBBARD. So the issue of depreciation should be settled in the implementing legislation so that there will be no controversy in years ahead?

Mr. KUJAWA. Yes. I think it would be desirable that the basis for accounting, regarding whether it should be a continuation of the affairs of the company or should be a different basis as I suggest in my testimony, be clarified in the legislation.

Mr. HUBBARD. Regarding reports—in view of your suggestion for public reporting, need either sections 235 or 236 of House bill 111 providing for an annual report and annual audit be amended?

Mr. KUJAWA. The public reporting responsibility of the Company has never been clear. Now, obviously, through the budget process this comes out. But, it seems to me, that the tollpayer, who is confronted with the prospect of paying the toll and wondering about whether there is going to be an increase or not, should have access somehow to a periodic report as to the financial results of operations of the Company and the prospects for toll changes. I therefore think it would be desirable that a statutory kind of standard be set to accomplish that.

Mr. HUBBARD. What are the essential points for public reporting?

Mr. KUJAWA. The essential points would be a financial report prepared in accordance with generally accepted accounting principles, which this Company does follow and GAO does audit. There, of course, would be an income statement, a balance sheet, a funds statement and all the appropriate financial footnotes and disclosures that a normal utility would produce.

Mr. HUBBARD. Regarding form of agency, on page 15 you state your belief that control by appropriations would reduce the degree of forward looking flexibility of the Commission. If the leadership of the Commission is forward looking in their proposals and the Congress is equally forward-looking in accepting proposals for long-range viability, including a good capital program, then your major concerns are solved; is that true?

Mr. KUJAWA. Yes, I think that if the result of the process is that those who are involved keep in mind the longrun financial viability of the Commission, that result is achieved.

The only question is whether the form of the control by its nature tends not to be forward looking. As I indicated in my testimony, the appropriation control process looks at the single dimension of cash. If all the decisionmaker looks at is the preservation of cash, then he is going to make wrong decisions. I very strongly urge that the decisionmaker look at more than that, look at all the resources. That can be achieved through the enterprise accounting process that I explained in my testimony.

Mr. HUBBARD. Regarding reevaluation assets, in your proposed reevaluation of assets you arrive at a figure of $400 million for assets to be reevaluated. Given the fact that this figure differs only moderately from the stream of revenue that would be generated under the present system and by the current value of assets, is it worth the administrative burden of reevaluating the assets?

Mr. KUJAWA. I think it is. The continuation of the accounting of the Panama Canal Company will increasingly cease to have a logical basis over time, and it can therefore become controversial. That is why I think it is worth a little effort—I don't think it would be that much—to go through this revaluation process for some of the assets. I am not saying that you should revalue all assets; as I indicated in my testimony, it is only those assets that need to be replaced to keep the place going.

Mr. HUBBARD. If your proposal for a financial reorganization were implemented does this mean that the Panama Canal Commission would not be successor to the assets and liabilities of the Panama Canal Company?

Mr. KUJAWA. No, sir, it is the successor. It is only a question of how it sets up its assets on its books and the form of the accounting to be followed as well as the basis for the accounting.

Mr. HUBBARD. Am I being too specific, then, by asking if it is not true that section 201 of the administration bill would have to be revised?

Mr. KUJAWA. Someplace I think it would be desirable that this basis of accounting be set out.

Mr. HUBBARD. With respect to the legislative controls you recommend over the surcharge, do you know of any similar provisions of law which govern public utilities in the Federal governmental or private sector?

Mr. KUJAWA. Yes; the electric companies in the United States face problems of major expansion in plant through need for additional capacity as well as environmental kind of expenditures and this matter of including in the rate a capital amount is very carefully monitored by the State regulatory bodies. The utility can only do it with specific authority from the State regulatory bodies, and it is monitored very closely.

Mr. HUBBARD. I have asked enough questions of you and before I start on questions to Mr. Steers I think it only fair to let the other members go ahead.

Mr. Bauman?

Mr. BAUMAN. Mr. Chairman, I just want to try out a few quotations here since both of these gentlemen are experts in accounting and get their judgment.

Secretary of State Vance, last year, before a Senate committee said, "Treaties require no new appropriations nor do they add to the burden of the American taxpayer."

Deputy Secretary Christopher insisted during negotiations that payments to Panama for its contribution to the Canal authority be drawn from the Canal's earnings. Treaties will not require any appropriations from the American Treasury to the present authority.

We wanted a treaty that would not put a financial burden on the American taxpayer and we got it.

May we assume from both of your statements that all three of those are incorrect?

Mr. STEERS. I would say, yes. I think it is obvious what has developed since then, that demands have increased and there is heavy request for additional improvements to be made by the United States in some of the facilities before they are turned over to Panama. Funds to meet such demands will flow from the taxpayer.

Mr. BAUMAN. I raise the question before you because you are really the first experts in accounting and financial matters we have had before us. The rest of the witnesses have been somewhat political in our view, and your statements, which I find to be very helpful, have strictly devoted themselves to the economics of the operation which, in my impression, are the single most important aspect of the success of these treaties.

That is why I asked you those questions. Do you concur, Mr. Kujawa?

Mr. KUJAWA. It is a matter of defining, of course, what you mean by burden. I don't know what the authors of those statements had in mind when they were discussing the burden. Certainly, there are costs associated with the treaties that are going to be borne by the U.S. taxpayers, based on the present planning that I am aware of.

Mr. BAUMAN. Depending upon whose estimate one accepts, the testimony before our committee so far this year indicates that the cost could range from $1 to $4 billion over the life of the treaty to the end of this century. In any case that is a rather substantial burden.

Let me ask this question: You made the statement, Mr. Kujawa, that in the immediate short term the financial situation of the Canal Company and the operation of the canal seems to be relatively secure. A few years ago, as we know, they were operating for the first time since 1950 at a deficit. They now have a $70 million operating surplus.

Governor Parfitt was asked by a Member of Congress to provide a breakdown of the operating cost of the Canal Company if the treaties had been in effect for 1977 and 1978, and to give you the comparative figures and ask for your comment on this: A $4,463,000 surplus in 1977 became a $32 million deficit in 1977, if the treaty had been in effect; and, for 1978, a nearly $16 million surplus became nearly $22 million deficit. Is that roughly what you would say——

Mr. KUJAWA. I can't vouch for the exact numbers without having the details, but that kind of result I would expect. Those years, with the treaty requirements imposed on top of them would have produced a loss, thus indicating a need for a total increase.

Mr. BAUMAN. You are quite right that the estimates do not take into account any projected toll increase and the reason I asked that question is to lay the basis for my next inquiry, and that is, from either of your viewpoints is it correct that in order to finance the terms of the treaties, the political cost superimposed upon the operating cost, that immediately within a matter of months of an increase in tolls of at least 22 to 25 percent is necessary?

Mr. KUJAWA. It may be a bit lower than that based on current traffic levels.

Mr. BAUMAN. The increased traffic?

Mr. KUJAWA. Yes; traffic has been very strong in recent months so it could be that the increase needed is less than that. But there is no question in my mind that once you impose these additional cost burdens as a result of the treaty on the Commission, that a toll increase is necessary.

Mr. BAUMAN. There was an interesting suggestion made in the course of Mr. Steers' remarks, and one that has occurred to me. It appears to me that if the United States is going to be forgiving interest payments, depreciation and other income that we would have expected from the Canal's operation throughout the remainder of the century, that some concomitant forgiveness ought to be exercised on the part of the Government of Panama, which requires all right, title and interest to the property and absolute control, and all of the income from it after the year 1999.

Am I correct in my estimate that, for instance, a tolls increase would require the American consumers to absorb roughly about a third of the cost of those toll increases?

Mr. KUJAWA. There have been various estimates on that. Mr. Brandes follows me in testifying. He has made the most detailed studies I am aware of on that particular question. I think you had best ask him that question.

Mr. BAUMAN. The point I am trying to make is if the consumers are to suffer because of increased cost of products transiting the canal, if the taxpayer is to suffer by forgiveness of enormous amounts of money, ordinarily that would have been income, and the Canal Company itself, the transiting may suffer because of the increased toll—everyone is suffering except the Government of Panama, which comes off with $75 or $80 million a year in absolute payments with no responsibility other than to sit there and enjoy co-equal status with the United States.

Am I incorrectly——

Mr. KUJAWA. There is no question that from a financial standpoint Panama is a beneficiary of the treaties of 1977.

Mr. BAUMAN. Were our negotiators, to the best of either of your knowledges, aware of the impact that these toll increases would have during the period when they were writing these treaties with the Panamanians?

Mr. KUJAWA. I don't know.

Mr. BAUMAN. Mr. Steers?

Mr. STEERS. I can't answer that question. I don't know.

Mr. BAUMAN. Would you say that the formula embodied in article XIII and other parts of the treaties is a responsible formula based on the impact economically that the toll increases will have?

Mr. STEERS. I have some serious reservations about some of the financial provisions of the treaty. To what extent they sat down with pencil in hand and really figured all this through, I don't know.

Mr. BAUMAN. If I am not mistaken, I think, since 1974, because of certain changes in measurement of tonnage shipped through the canal, as well as actual increases in tolls, we have already had an effective increase of 50 percent since 1964 in the cost of the tolls; is that correct?

Mr. STEERS. That is correct.

Mr. BAUMAN. Then we would impose upon that another increase?

Mr. STEERS. I believe there is one in process right now.

Mr. BAUMAN. Yes; Governor Parfitt is down there right now assessing the amount of that. But we will now impose another increase.

What about the sensitivity of traffic, or is that better left to——

Mr. STEERS. That is better left to Mr. Brandes, the economist who is scheduled to testify later before this committee.

Mr. BAUMAN. Do either of you think that we should further define in this legislation specifically the terms of cost as it applies to article XIII, section (4)(c), contingency payment?

Mr. STEERS. That has to be done.

Mr. KUJAWA. XIII(4)(c) requires, in my judgment, language in the legislation defining how that surplus is to be determined. The treaty language is very broad and it has to be defined some way and it seems to me the appropriate way to define it would be in the legislation.

Mr. STEERS. There has to be a definition of both the revenue side and the cost side, not just the cost side.

Mr. BAUMAN. Is there any relationship in accounting terminology, words of art to that phrase in the treaty that says something about revenues as compared to expenditures?

Mr. KUJAWA. "Expenditure"—that word would be better described as cost. If you are comparing revenues, you would generally compare revenues with cost or expenses. Expenditures would be compared with receipts. If you are a ma-and-pa grocery store you are comparing cash, whereas, if you were on a cost basis, an accrual accounting, you would be comparing revenues with expenses and/or costs.

In the Spanish version of the treaty—I had one of my Spanish-speaking partners look at it—it says revenues in comparison to expenses. So the Spanish version is better than the English version.

Mr. BAUMAN. Some of us feel that in any language it is not a very good treaty but that is neither here nor there. The Panamanian Government's position as expressed to us is that the $10 million contingency is an absolute right which is to be paid in advance and that the budget for the coming fiscal year, the tolls are to be increased to cover that. I don't read that in any of the treaty's terms, do you?

Mr. KUJAWA. I do not.

Mr. BAUMAN. What if the $10 million is an absolute payment added to the other costs of the treaty, the payments that they provide for the fixed annuity and the sanitation services and so on? What will that do to maintenance? This is a middle-aged lady, this machinery in this canal, and she requires constant work and attention and projected prospective maintenance. What if you take that $10 million as an absolute payment, isn't that going to further hamper the operation and capital upkeep?

Mr. STEERS. I would say, it depends if it is provided for in the toll increase presently being developed. That $10 million, if it is to be considered a mandatory payment paid at the beginning of a year regardless of how that year comes out, should be provided for in the toll rate.

Mr. BAUMAN. Mr. Chairman, just one last question.

Are either of you privy to any sort of a Panamanian interpretation of the financial terms of the treaty? You mentioned, Mr. Steers, the lack of a coordinating committee in that particular area of liaison now going on?

Mr. STEERS. I just have a very strong feeling that the accounting turnover is now being controlled the way it should be. For example, on October 1, I believe the terminal operation passes to a Panamanian entity. On that date, something like 1,500 or 1,600 employees have to be paid. Someone has got to be ready to pick up those employees, have the resources to pay them, further plans and procedures must be developed now on how the day-to-day accounting is to be transferred, for example, for the terminal operation.

How are they going to meet their payroll? I don't know. That is their problem. They probably will. But the big problem is how to get the going accounting data transferred to whatever Panamanian entity takes operational responsibility so that control of the financial processes is not lost.

This position applies also to the transfer of the hospitals, for example, to the military. The military computer system is entirely different than the Panama Canal's and it is not compatible.

Mr. BAUMAN. The President of Panama made a statement a few weeks ago that regardless of whether the Congress of the United States passed implementing legislation, the Panamanians are going to come in and take over the Canal on October 1. That was his phrase. Do you think financially that could be accomplished unless we act in a legislative capacity? There is no framework existing to carry it out, is there?

Mr. STEERS. I don't really know what he means by the words "take over." If it means just some people coming in, like they have done on occasions in the past, it would be quite disruptive.

Mr. BAUMAN. Is there anything in place absent legislative action by the Congress to carry out the transition? For instance, we were told by the Department of Defense that they have no authority.

Mr. KUJAWA. That is a significant legal question, of course. I really can't answer it.

Mr. BAUMAN. Thank you, Mr. Chairman.

Mr. HUBBARD. Mr. Lowry?

Mr. LOWRY. I really found both of you very helpful.

I believe you primarily talked about the economic cost accounting functions as opposed to political questions involved.

Mr. KUJAWA. Yes, sir.

Mr. LOWRY. I think, Mr. Kujawa, you explained it but I just couldn't quite follow it. On those assets that will need to be replaced that, under your recommendation should be depreciated, you had $900 million in assets. I believe that you subtracted it out from the $5.3 billion. And, yet, your recommendation, your depreciation schedule is a $400 million depreciation schedule, which is $23 million.

What is the answer on the other $500 million, which you probably told us but I couldn't follow?

Mr. KUJAWA. The $900 million is the gross amount, and when you reflect the current condition of those assets—in the accounting process we call that a reserve or allowance for depreciation—that $900 million becomes $400 million. So they are a little past the halfway mark in terms of their total service capacity capability. If you want to maintain that capability in the same place—not improve it, just maintain the same service capacity over time—$400 million will take care of it at current price levels.

So $400 million worth of capital will keep you whole, marching forward; you won't get any better. The point is, I am trying to prevent you from getting worse, so I put my accounting thermometer in there and as long as you are maintaining that same place, I say you are doing all right. If you are getting behind, I would say, look out.

Mr. LOWRY. You answered the question. Thank you.

Mr. Steers, what I am really trying to understand is what costs should go into the tolls and what the tolls should be. You used the term economic rate. Does that refer to competition? In other words, I think the basic question before us is what costs should go into what toll rates should be, and should that include employee costs.

You mentioned the importance, of course, of the employees, which we heard many times. What all should go in there? In some place there is an economic rate as opposed to the land bridge or something else. Could you answer that?

Mr. STEERS. I believe I used the word "economics." Was it in connection with——

Mr. LOWRY. You may have used the words "economic rate." I thought you did. But the question is what is the economic rate of the tolls? And, how high can tolls be?

Mr. STEERS. Mr. Brandes, who will be testifying a little later this morning, has made several studies on the elasticity or sensitivity of traffic to various increases in tolls. He, I believe, is better qualified to answer that question today than I am.

Mr. LOWRY. We will ask him. But, in your opinion and your experience, do you think that the various costs that have been recommended here that will be paid for one way or the other, can be carried in the tolls?

Mr. STEERS. You could get to a point where an increase in toll rates will deter the movement of cargo through the canal. The shipper will look for and use the most economic route.

Mr. LOWRY. Do you want to give an estimate on what increase you think that could be?

Mr. STEERS. I don't think I could do that. No; I am not familiar enough with the current traffic and the projection for the next few years.

Mr. LOWRY. Thank you.

Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Carney?

Mr. CARNEY. Mr. Kujawa, you mentioned before that the traffic has been strong in recent months. Can you tell me why and how long you might project that traffic to stay strong?

Mr. KUJAWA. First of all, the Alaskan oil is flowing strongly through the canal right now. I am sure you are aware of some of the factors there. As far as we know, that will continue.

This Congress could make a decision to change that. For example, as you know, there have been recommendations made by some that the United States ought to swap Alaskan oil to Japan with oil coming from another place to make it up, say, Saudi Arabia. If a swap arrangement were approved by this Congress that said that all oil in Alaska could, in effect, be shipped to Japan in exchange for a like amount of Saudi Arabian oil, that traffic going through the Panama Canal would stop overnight and would present then that much less revenue to the Panama Canal.

Over and above that, based on my current knowledge, the Panama Canal traffic is very good. The grain traffic, for example, going from the gulf coast to Asia, principally Japan, is very strong right now. There is no expectation that that is going to be seriously depressed in the near future.

Mr. CARNEY. You would agree then that, under XIII(4)(c) that before that $10 million comes into play, we should be salting away the $23 million for depreciation so they can, in fact, continue to run the canal in a viable fashion and will have the capital funds necessary to make the necessary corrections and improvements on the canal?

Mr. KUJAWA. Yes, sir.

Mr. CARNEY. And you suggest strongly that action could be put into either legislation whether it be the administration's or Mr. Murphy's?

Mr. KUJAWA. Yes, sir.

Mr. Carney. If I may ask that same question of you, Mr. Steers, would you agree on that too?

Mr. Steers. You use the words "salted away." Do you mean that the annual depreciation would be put into a special account and funded.

Mr. Carney. Prior to identifying the profit. In other words, we have to have that $23 million prior to identifying an excess profit to give the additional $10 million to the Panamanian Government.

Mr. Steers. I have no objection to placing the $23 million into a separate fund. The $23 million, under accounting processes, in determining net revenue, is depreciation that would automatically be a cost and would be considered before arriving at any funds payable under XIII(4)(c).

Let me point out, I think it is extremely important that the legislation defines the revenue side as well as the cost side. If there is to be a surcharge or some factor in the toll rate as an alternate for capital improvements, it should be specifically pointed out that that is not a revenue item to be used in computing excess revenues. It is a provision for a capital improvement not revenue.

Mr. Carney. And that should be specifically noted in any implementing legislation?

Mr. Steers. I would think so, yes.

Mr. Carney. Mr. Steers, if I may, the Panama Canal has many ancillary revenue provision facilities, the Panama Canal Company, that is, which, as of October of this year will be turned over to the Panamanian Government. It has been said that that would almost be a whitewash by some. As much as they are a revenue-producing facility they have costs involved in it as well.

With your vast experience as vice president in charge of financing down there would you give any type of ball park figure as to whether we are indeed losing money that was once in the profit column from, for example the docking facilities, and the repair facilities that would have to be then put into the increase in tolls to make up for the loss?

Mr. Steers. I think the terminal operation, marine bunkering, was generally always lucrative and provided a good cash flow. That source of funds will be lost. You are referring to those that will be transferred to Panama and not to other government agencies?

Mr. Carney. Right. You just mentioned two of them that will be transferred to Panama and they have produced profits for us.

Mr. Steers. These two provided a good cash flow which will be lost. The cash flow didn't always necessarily channel back into terminal activities. It was used in some other aspects of the capital program within the canal.

The commissary operation, I guess that moves to the Army. Was always just one that was marginal, as far as I could see, and I think the canal would be relieved of some cost probably in connection with the transfer of the commissary operation.

Mr. Carney. But the marine bunkering and the docking facilities, repair facilities, et cetera, would be turned over?

Mr. Steers. I think there would be a residual effect that would place an added cost on Commission operation.

Mr. Carney. We are getting the commissary to run at a loss; they are getting the marine bunkering that runs at a profit. It is obvious that the profit making portion of the ancillary industries involved in the canal are going to the Panamanian Government and in order to make that loss up it can only be made up from costs——

Mr. STEERS. Or from the taxpayers, as the case may be. It would depend on to whom the facility is transferred. In some cases a marginal facility or one that is an appropriation facility is transferred to the military service. The hospital, for example, didn't run at a profit.

Mr. CARNEY. That, of course, would be something that we take the responsibility for and the taxpayer will bear the burden of that. But, I am trying to identify the profitmaking——

Mr. STEERS. Panama receives the profitable ones.

Mr. CARNEY [continuing]. Processes that Panama gets and to make that up, the only way we can really make that up is to increase the tolls. We have taken all the losses; they have taken all the gains. Those gains that used to balance it a little bit would be made up through increasing tolls. Is it possible for you to try to get an estimate on that, perhaps not right now?

Mr. STEERS. I don't have the current figures. I am sure the Company itself could give you the estimates you want. They have the operating figures through the current fiscal year and they should be able to turn it over to you.

Mr. CARNEY. Mr. Chairman, could we request the Company to do just that?

Mr. HUBBARD. We can request, yes.

Mr. CARNEY. I would appreciate it if we would. I would hope that we could get that.

Mr. HUBBARD. I will ask the staff to please take note of Congressman Carney's request on behalf of the—or the committee's request on your behalf.

Any more questions, Congressman?

Mr. CARNEY. No, I would just like to state that I appreciate both Mr. Kujawa's and Mr. Steers' testimony today. It was very eye-opening. Thank you both very much.

Mr. HUBBARD. Congressman Anderson?

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. Kujawa, in your statement you tend to favor operating the Panama Canal in a corporate form as compared to an appropriated fund agency as this is the most self-sufficient. Do you feel that the canal did not operate successfully as a appropriated agency prior to 1961, and don't you believe that the present forecasting is accurate enough for our appropriations system?

Mr. KUJAWA. The latter question, Congressman Anderson?

Mr. ANDERSON. Don't you believe that present forecasting is accurate enough for our appropriations system?

Mr. KUJAWA. The problem I have with the period prior to 1950 is based on the accounting then performed. I am not certain that one could determine whether the Panama Canal was financially a success or not. There was not an accounting performed to allow you to reach a conclusion in that regard. So pre-1950, I am not sure there is an answer to your question.

Post 1950, there has been an accounting performed. We started in 1950 with an accounting base. Mr. Steers referred to it. And we know what has happened since 1950. We have a proper accounting.

One of the problems, by the way, is that in the Canal Zone there are many military facilities interspersed with Panama Canal facilities. From an accounting standpoint, you have to carve out these military pieces otherwise you don't know how the Panama Canal is doing as a business. In pre-1950 there wasn't this strict separation between the affairs of the Company and the military. There has been since.

Going forward, as far as what the appropriation accounting does for you, as I suggested in my testimony, it layers another piece of control over the affairs of the Commission. And the question is whether this additional layer is (1) effective and necessary in the circumstance. Undoubtedly, that layer does something. It does potentially impose more control, but the question is whether that additional control is really necessary.

Mr. STEERS. Mr. Anderson, might I explain a little bit what occurred prior to 1950 on this?

First, that the requirements placed on the Panama Canal as an agency prior to 1950 did not require them to maintain the accounting records that would generate the toll rate. That was one of the basic reasons in 1950 that brought about the reorganization, to develop an accounting process from which toll rates could follow.

On the appropriation form of agency, let me say this: The Panama Canal Company today keeps its books on an accrued basis as well as a basis that flips them over to an appropriation requirement. The Company/Government are one of the few agencies that submit its budget on both an accrued and appropriation basis.

Yet, Canal Zone Government's budget is on an appropriation basis. So we just flip them over. Everything is there. The analysis is there for cost purposes by various functions. It is computerized. The mechanics are basically in place and it is being presented and defended pretty much that way today.

There may be a few extra accounts you have to set up to cover the overall appropriations but it is no burden. My concept of appropriation agency is one that doesn't detract from flexibility. As might be argued in contrast to the corporate entity, it is simply that you have an appropriation that covers the operational requirements of the Company and one that would cover the capital requirements. Those would be your two line appropriations.

I am not thinking of a whole series of individual limitations within operations. The Commission would operate within operation appropriations. It could move funds from the locks to dredging, for example, if their budget changed as the year went on, so long as they were within the overall appropriation requirement fixed by the Congress.

Mr. HUBBARD. Mr. Bonior?

Mr. BONIOR. Under the appropriated process prior to 1950, the one Congressman Anderson was referring to, do you recall if through the appropriation process the operating expenditures were itemized to a degree that would negate flexibility?

Mr. STEERS. Prior to that and immediately after 1950 as well, the canal reported in the budget process by functions. Say, the lock operation, dredging operation, navigation operation. It further proved financial data by object of expenditure, which is the primary object where the initial cash flow was disbursed.

I wrote the procedures for it. We had primary, secondary and tertiary object numbers so we could follow it right through. It was all just done through the mechanics of the accounting process, so you could get your accounts functional by object of expenditure, object expenditure by function, by the Company as a whole, or any portion you wanted of it.

Mr. BONIOR. OK.

Mr. ANDERSON. Mr. Kujawa, this morning you have been relating much of this as analogies of how you would operate a business in comparing these things. I know you have touched on this But I wish you would run through it once again and try to do it in the framework that, if we were running the business of building a building, on this $5.1 billion we start off with, you quickly write off $3.5 billion for excavations and things like that.

Then because we give Panama and the Department of Defense $700 million, you push that away, then come up with $900 million. And that is what you call the cost of assets to the Commission. You take $500 million depreciation.

Was that on the total amount or just on the current—that is on the total?

Mr. KUJAWA. That is on the $900 million.

Mr. ANDERSON. The $500 million is depreciation on the assets. Then you wind up with $400 million, and you want to work that off on $23 million a year for the life of the treaty.

How would you analyze—if you were doing this for a building down here, you are setting us up a balance and loss system, how would you do that in our language? You keep referring to this analogy all along—mom and pop store business—you lose me somewhere here.

What happened to that $3.5 billion?

Mr. KUJAWA. What happens to that, of course, is by a contractual agreement with Panama, it passes to Panama in 1999 for nothing.

Mr. ANDERSON. We just wipe that $3.5 billion off?

Mr. KUJAWA. As an accountant, I set that aside. When the United States has agreed that that goes to Panama in 1999 for nothing, there is nothing to account for any more. You in your contract have arranged for that transfer to occur.

Mr. ANDERSON. The $700 million——

Mr. KUJAWA. Again, my contract, the treaties, to be transferred to the Department of Defense and Panama.

Mr. ANDERSON. That is also gone?

Mr. KUJAWA. Nothing left to account for there. It is gone.

Mr. ANDERSON. Then we start with $900 million and amortize that at $23 million a year. Then we get the $500 million, depreciation, and then the $23 million a year——

Mr. KUJAWA. The $900 million, that is the accountable starting point. Now, if your objective is, like mine is, to end up with a financially viable commission, you have to decide what we must account for to measure whether we are maintaining viability.

Mr. **Anderson**. Did you determine what you could make to arrive at the $500 million depreciation? How did you get that so fast off $900 million? You had to start that from the time of the treaty, or did you go way back? And if you did go way back, why do you say we are already down $900 million? Then you go back to the $5.1 billion.

Mr. **Kujawa**. Let us take, as an example, a fleet of automobiles. This may help us.

If you had a fleet of automobiles, as the Panama Canal Company does, trucks and vehicles and so forth, the question at any point in time would be: What is the condition of that fleet of automobiles? There is a difference between an all-new fleet on the one hand, a fleet that is ready to go to the scrap heap on the other, and a fleet that, on average, is 50 percent into their whole service life.

If you decided, for example, that your vehicles will last you 5 years, and that fleet of vehicles cost you $10 billion and they are on average 2½ years old, the service capacity of the fleet is $5 million. So if you go from $10 million, the purchase price, down to $5 million, which is the remaining service capacity cost of the fleet, then my accounting process says, OK, am I staying at that point, am I deteriorating or am I improving? If I replaced automobiles on a pro rata basis, I should always have at a point in time my fleet of automobiles one half depreciated.

Mr. **Anderson**. What period did you start the $500 million depreciation, then?

Mr. **Kujawa**. At the inservice date of the assets.

Mr. **Anderson**. When would that have been?

Mr. **Kujawa**. In the case of the locks, it could have been 1914.

Mr. **Anderson**. You have already written $3.5 billion off, and you have written the $700 million in the gift. Then you said the cost of the commission, $900 million.

Mr. **Kujawa**. I did not write off the locks' machinery, the motors, for example, that drive the locks. That has to be replaced There is an engineering estimate of when those have to be replaced.

Mr. **Anderson**. I think the thing that bothers me, I get the impression you arrived at the amount of money you thought you could get each year and multiplied it by a factor. We have to arrive at a—I do not see how you arrived at $500 million so arbitrarily.

Mr. **Kujawa**. It was not arbitrary. It was based on a measurement—though you should not get the impression I have spent many months doing this. It is an estimate of the remaining service capacity of the equipment now in place at the Panama Canal that must be replaced over time to maintain viability. So in taking the inservice date and subtracting the pro rata percentage of the total life of the piece of equipment, I have arrived at this gross amount.

Mr. **Anderson**. My last question to you, Mr. Kujawa, on Page—I guess it was 28 of your statement where you are discussing this treaty article XIII(4)c, you say: "* * * payment of up to $10 million is due the Republic of Panama if 'revenues exceed expenditures' in any one year. Amounts unpaid from previous years accumulate and become contingently payable in figure years * * *"

Does this mean this can be juggled so, if one year you do not make enough, you can juggle them to come up with a highly profitable year?

Mr. KUJAWA. I would hope in our accounting process we do not juggle.

Mr. ANDERSON. Again, your sentence raised that question. When you said "amounts unpaid from previous years accumulate and become contingently payable in future years, again, based on the 'if revenues exceed expenditures' formula."

Right now, I understand they are making money. There can be a time when they lose money. This gives me the idea you are saying, let it lose for several years, then a big profit.

Is that a possibility?

Mr. KUJAWA. Based on the treaty, let us say you have 2 successive break-even years. Well, you have a contingent liability of $20 million to Panama. Let us say in year 3 you have a windfall profit of $30 million. The whole $30 million then goes to Panama, $10 million for year 1, and $10 million for year 2 and $10 million for year 3.

Having satisfied the $30 million for all 3 years, there is nothing left contingently payble to Panama. It is a clean slate at that point in time, and you start the clock again.

Mr. ANDERSON. Mr. Steers, on page 13, you raise the problem: What happens to Commission management at the close of business on December 31, 1989? And you suggest the possibility of debts.

What debts, beyond those in the treaty, could we be liable for?

Mr. STEERS. This is 1999.

Mr. ANDERSON. You said 1989, at the close of business on December 31, 1989. You are talking about the change of command, administration.

Mr. STEERS. I am sorry; I should have put a subheading in there.

I am referring, paragraph 51, upon the termination of the treaty.

Mr. ANDERSON. You are also going to have a change of command in the 1980's.

Mr. STEERS. That is correct.

Mr. ANDERSON. You have indicated there can be a lot of changes in command.

Mr. STEERS. That is right.

Mr. ANDERSON. It would be a lot of debts to us. What debts would we be liable for beyond those specified in the treaty?

Mr. STEERS. On December 31, 1989, I do not know of any debts the United States would be liable for. On December 31, 1999, the United States could well be liable for any unpaid bills of the Commission.

Mr. ANDERSON. By those people administering it from 1989 to 1999?

Mr. STEERS. Yes sir.

Mr. ANDERSON. That is the area I am concerned with. If we have people that are not concerned about what we have to pay, what actually could we be liable for beyond those specified in the treaty?

Mr. STEERS. I do not think the treaty specifies amounts you are liable for.

Mr. ANDERSON. It could be unlimited?

Mr. **Steers**. Whatever debts the Commission has unpaid as of December 31, 1999. Whatever that will be, I have no idea. I suggest the legislation clarify this point.

Mr. **Anderson**. Thank you, Mr. Chairman.

Mr. **Hubbard**. Congressman Bonior?

Mr. **Bonior**. Mr. Steers, on the first page of your statement you express a concern for the shipping industry—excuse me—world shipping. And you state the world shipping would best be served if the Panama Canal Commission would be a financially viable entity, or words to that effect.

Then on page 6, you state, under the section subtitled "Tolls," that you urge a favorable consideration of the toll structure contained in the Murphy bill.

How are those two statements compatible, given the fact that under the committee bill that we are considering, the interest rates, payments to the United States and the amortization payments would indeed increase the totals anywhere from 35 to 40 percent? We have heard testimony to that effect.

How do you justify both of those statements?

Mr. **Steers**. First as to a viable financial entity, inherent in what I am saying is that generally accepted accounting principles must be followed in developing the accounting process and in developing the toll. That generally accepted ratemaking policy will include those costs proper under the circumstances.

If I have a financially viable entity operating on that basis, I believe the shipping industry will accept, with some degree of confidence, that the toll rates do reflect the proper costs in the circumstances.

As far as developing the toll rate itself, I believe that all those costs for which the entity is responsible that do impact upon the transiting of ships should be included in the toll rate. It could well be the toll rate may become uneconomical and that the shipper then makes a decision to use an alternate route.

I believe that is an important part of the management, to manage that place efficiently and effectively, so that there will be economic viable toll rates that would not drive away business.

Mr. **Bonior**. Let me ask you an economic-political question. I did not read your total statement because it came in late and I did not have time to read it last night.

Do you anywhere in your statement or do you have an opinion, if not in your statement, on whether indeed the cost of amortization and the interest as proposed of $20 million should be included in the toll rate?

Mr. **Steers**. I believe the U.S. Government does have an investment in the net assets of that Commission and that interest would be a proper cost to include in the toll rate.

Mr. **Bonior**. What about the amortization?

Mr. **Steers**. I believe amortization—are you using the word "amortization" to mean depreciation, or are you——

Mr. **Bonior**. Amortizing investment——

Mr. **Steers**. Amortization is accomplished in part through the depreciation process.

Mr. **Anderson**. If the gentleman will yield, is that true of amortization in general?

Mr. Steers. Some years ago the Company went through a hassle with the General Accounting Office and the Budget Bureau as to whether or not the annual depreciation accrual should be covered into the U.S. Treasury as a reduction of its investment. Now, I agree with Mr. Kujawa that you should not have both the amortization and the depreciation. If you are going to have to amortize that investment, you must then provide for the cash flow to amortize. Something will have to give or alternative source of funds for capital improvement developed.

I do not think you can charge the shipper a double depreciation. You will have to have one or the other or provide some other means of financing your capital program, which might be through borrowing.

Mr. Bonior. Thank you.

Just one other question, Mr Chairman.

Mr. Kujawa, I did not have a chance to read your statement, either. But do you support the corporate form of administration of the Commission, as opposed to the appropriated agency form?

Mr. Kujawa. Yes; I think I have a preference for the corporate form. I strongly urge as part of that, that regardless of which approach you take, that a comprehensive accounting for all costs be accomplished. So the thing of greatest urgency and concern to me is that you have a very strong requirement for sound accounting for the affairs of the Commission. And then after you get there, it is a question of preference whether you believe that over and above this inherent control you need additional appropriation control. I am saying that you do not need to have it in order to accomplish control.

Mr. Bonior. As opposed to layers in government.

Mr. Bauman. Is your assumption in that recommendation that the Commission will operate pretty much as the Company has, with a cohesive Board of Directors and a unified command? Is that your assumption?

In other words, you are removing the political factor from your equation?

Mr. Kujawa. That is true. I am assuming that the affairs of the Commission will be managed on a business-like basis. If your prognosis is that will not happen, then a different conclusion would be appropriate.

Mr. Hubbard. Mr. Treen?

Mr. Treen. Thank you, Mr. Chairman.

I will yield to Mr. Carney.

Mr. Carney. Mr. Kujawa, you said the reason that $3.5 billion is given away is that we have given that away by treaty in 1999. In fact, the reason we do that, they are not fixed assets that have to be replaced. They are the ditch, the banks, and that, in 1999, we give everything away. We are out of Panama.

So your statement of $3.5 billion given away in 1999 was wrong. That $3.5 billion you consider as not being assets that will be depreciated; is that correct?

Mr. Kujawa. That is correct.

Mr. Carney. Then the $700 million that we are giving to Panama in 1979 is additional equipment that does not have to be depreciated because it is not ours.

Then we get down to the $900 million. And you went through that equation.

Does that clarify that a little more?

Mr. ANDERSON. As best you can, I guess.

Mr. CARNEY. I want to get back to the $3.5 million.

When I was in Panama, we talked about slides that, as recently as 20 years ago, that created a tremendous expense to open the canal again when the channel was almost closed by slides and land changes. Where do we anticipate that type of program? You may not consider it a capital thing, but an ongoing maintenance program.

Are we anticipating any problems like that in the next 22 years?

Mr. KUJAWA. The Panama Canal Company, of course, has an ongoing maintenance program, including significant dredging. And that is in operating costs of the canal currently. It is a pay as you go kind of maintenance

Now, as part of that, there is no basic assumption of a catastrophe, a massive type of collapse of the bank. If that occurred, at that point in time you have to dig it out.

Mr. CARNEY. The history of the canal points out that we have had tragedies down there of the extent that could be considered more than just maintenance of the canal. We have had slides down there that closed the canal and cost maybe $60 million to remove one, over $100 million to clean another one up, if I am not mistaken.

Mr. STEERS. A lot depends on how the slide is removed. If you have a slide down there and it is removed by the dredging division, by in-house people, you have no impact on the budget. Instead of working over here, they are now digging out the slide.

There will be additional cost only if you go to an outside contractor to help you move that slide.

Mr. CARNEY. Where might we come up with the money for such a project?

Mr. STEERS. If they do not have enough money, I suppose the emergency fund would be used.

Mr. CARNEY. Thank you, Mr. Chairman.

Mr. HUBBARD. A couple of last questions from counsel, Mr. Tannenbaum.

Mr. TANNENBAUM. Thank you.

Would either of you gentlemen say that good accounting practices would include, normally include interest payments on an investment? I know Mr. Steers feels that way. I wonder how Mr. Kujawa would respond to that.

Mr. KUJAWA. There is no question in my mind that interest is a cost.

Mr. TENNENBAUM. So this would be required by good accounting practices?

Is it not also true that the interest payment has historically been paid through the years in the operation by the Panama Canal?

Mr. KUJAWA. Yes, it has.

Mr. TANNENBAUM. So to suggest that the Murphy bill adds on a cost of interest payments, is that not erroneous to suggest it is being added on? Is it not true the Commission bill is just arbitrarily eliminating a normal operating cost of the facility?

Mr. KUJAWA. The Murphy bill does not add on interest over and above what is there now.

Mr. TANNENBAUM. So then H.R. 1716 is bad accounting practice in that it just arbitrarily lops off a normal operating cost; is that correct?

Mr. KUJAWA. Well, bad accounting?

Mr. TANNENBAUM. If it is not good accounting practice, is it bad accounting practice?

Mr. KUJAWA. If your decision swings on the accounting dimension only, should it be accounted for as a cost, you are correct.

Mr. TANNENBAUM. We could just arbitrarily take any other cost and charge it to the Department of Defense if we want to keep the tolls down. If it is the intention of subsidizing the canal, why not say it instead of coming up with gimmicks?

Mr. Kujawa In the current legislation you have defined the costs to be recovered through tolls. In that definition, you have excluded certain things. For example, any related defense facilities in the Canal Zone by definition are excluded; and the retirement benefits to employees, based on civil service—as an accountant, I am aware of the fact that does not reflect the total cost of the retirement for employees; and so forth.

You have defined a level of cost.

Mr. TANNENBAUM. We are just eliminating some costs and charging them to the American taxpayer.

Now, on the question of amortization, is it not also true that if amortization is included now, it reduces the depreciation and the interest over the long term so that, in the long term, in the balance, there is no real additional cost by including amortization at this point; is that also true.

Mr. KUJAWA. Well, economically there is a cost because there is the present value of money. If you have to make a payment today as opposed to 20 years from now, even though each payment is only $1, I would rather pay the dollar 20 years from now than today

Mr. STEERS. If you are amortizing investments, you are reducing interest costs not depreciation each year.

Mr. TANNENBAUM. Well, the depreciation would cease after it was fully amortized

Mr. STEERS. So long as you have assets not depreciated, you would still depreciate

Mr. TANNENBAUM. All right.

On the issue of the payments to Panama, now, without the contingent payment, the payments to Panama will be approximately $75 million in 1980; is that correct?

Do you have the figure for the gross tolls in 1978? Is that not just under $200 million, $190-odd-some million?

Mr. KUJAWA. We do have 1977. Tolls were $164 million in 1977. I think that approached $200 million in 1978, you are correct.

Mr. TANNENBAUM. All right

So that the $75 million increase alone would account for, and since tolls would be the only method of revenue, would account for somewhere between 35- to 40-percent increase in tolls unless we resort to some financial gimmickry to charge the costs off to the taxpayers. Just the payments to Panama alone constitutes 35 to 40 percent of the revenues that would come in from tolls based on the current revenue system.

Mr. KUJAWA. That is mathematically correct, unless there are some offsets, the effect is 35 to 40 percent.

Mr. TANNENBAUM. But we have no other sources other than the taxpayer, the way I see it; is that correct?

Mr. KUJAWA. Other than the user of the canal, the only other remaining financial source would be the taxpayer.

Mr. TANNENBAUM. Have you projected for the payments to Panama through the year 2000? What I am driving at is the acceleration of the payments as mandated by the treaty.

Mr. KUJAWA. Well, the indexing as you know in the treaty for payments reflects inflation levels within the United States. And it depends on the level of future inflation.

Mr. TANNENBAUM. If it was based on the current level of inflation, what would the payments be during the term of the treaty?

Mr. KUJAWA. I have not made a projection on that.

Mr. TANNENBAUM. If the 30 cents figure is now approximately $45 million, which is the figure I think that was given, would it be fair to say that will double within the next 10 years, just that item alone?

Mr. KUJAWA. Assuming inflation rate of present levels, yes, sir.

Mr. TANNENBAUM. So the payment to Panama alone will vary—rapidly approach $100 million

Mr. KJAWA. With current inflation rates, yes, sir.

Mr. TANNENBAUM. Based on that, are you gentlemen concerned about the economic viability of this canal as a going enterprise, self-sustaining going enterprise?

Mr. KUJAWA. Well, if the Panama Canal cannot raise prices for impacts on its costs due to inflation, you have got major problems on your hand. The problem would be the same for any business, General Motors, the local grocery store, whatever, they have got to have the capacity to raise prices as inflation marches on. The Panama Canal is no different

Mr. TANNENBAUM. But if you start with a 40-percent increase just on the payment to Panama which increase escalates, the 30 percent per ton and also the service agreement escalates, are you not concerned then that we passed the sensitivity level where you increase it beyond the point of no return?

Mr. KUJAWA. Oh, yes.

Mr. TANNENBAUM. If the Alaskan oil traffic ceases, we could have a very, very serious—a disastrous situation; is that not true?

Mr. KUJAWA. All other things being equal, if no other traffic appears that is not there now, yes, sir, it is a problem.

Mr. TANNENBAUM. Do you concur, Mr. Steers?

Mr. STEERS. I certainly do. The canal has reached its economic maturity and is being kept viable by the Alaskan oil.

The canal is in a competitive position. There are other alternatives that become more attractive as the rates go up.

Mr. ANDERSON. Again, if the tolls are raised and shipping goes down and there is a loss from that point of view and the American taxpayer is reluctant to pick up the tab on balance so there is no money from the taxpayer and you lose money in the canal, Alaskan oil goes to Japan, are we as a country liable for these losses? If we do not pay for it here, do we have to pay for it in the end?

Mr. KUJAWA. It is an agency of the U.S. Government.

Mr. ANDERSON. If they run at a loss, even running under the administrators of Panama for the last 10 years, we have to pick up the total tab at the end of any loss?

Mr. STEERS. The ideal solution, to me, would be to turn the canal over to the Commission and tell them to run it without further financial assistance. The Commission is not to come back to the U.S. Congress for any further funds.

Mr. TANNENBAUM. Mr. Steers, you were in large part, according to your statement, responsible for developing the financial organization, the accounting, reporting and budgeting systems and all related policies brought about by the Panama Canal Reorganization Act of 1950. Yet that was the act in which the agency form was changed to a corporate form.

In spite of the fact you were part of that, you still favor the old form, the agency form?

Mr. STEERS. I played no part in the development of the legislation for that. I came in after the fact when the whole situation was put into effect.

I do not know what position I would have had at that particular time.

But my concept at this point in time is simply I believe that someone has to exercise a degree of control over the Panama Canal to protect the U.S. interests so long as the U.S. has an interest there. I think that participation by the Congress should be extensive enough before as well as after the fact. And that is why I favor the agency concept.

The accounting does not matter to me. It is secondary. But I believe the interests of the U.S. Government is best protected by having adequate control. I believe strongly at this point and the United States should not through this administrative process further weaker control over the canal as would occur if a corporate entity was continued. The international situation is too critical and the canal is too important.

Mr. TANNENBAUM. Your testimony is at great variance with the Governor's statement that he is quite concerned that it would be a nightmare to change the accounting system to accommodate an agency form.

How about you, Mr. Kujawa? Do you think that, accountingwise, this would be a big problem, to change it to appropriations rather than corporate form?

Mr. KUJAWA. The degree of the problem depends on the degree of the controls exercised through the appropriation control process. If the degree of control is identical to the control now exercised over the Panama Canal Company, there are very few accounts, I believe five accounts, if that is the degree of control, the accounting complexity does not amount to much.

Mr. TANNENBAUM. Then you would disagree. You feel the transfer can be accomplished to an appropriations agency without any great difficulty.

Mr. KUJAWA. If the degree of appropriation accounts, number of accounts, is no different than you now have in the Panama Canal

Company. That is an underlying assumption critical to that conclusion.

Now, if someone assumes an expansion in the number of appropriation accounts, as that expansion occurs, that is when the complexity occurs. The Governor may have assumed an expansion of the accounts.

Mr. TANNENBAUM. That expansion could be done over a number of years if it was so desired; is that not true?

Mr. KUJAWA. True.

Mr. TANNENBAUM. It is all done by computer anyway.

Mr. KUJAWA. Only a matter of programing the computer, although that takes some doing sometimes.

Mr. TENNENBAUM. Thank you

Mr. TREEN. Could I reclaim whatever is left of my time?

Mr. HUBBARD. We may have to have a vote of the committee on that. [Laughter.]

Mr. HUBBARD. Go ahead, Mr. Treen.

Mr. TREEN. About two-thirds of the cargo through the Panama Canal has origin or destination in the United States, I believe studies indicate.

So, to that extent the American public is going to pay the costs one way or the other If we load up the costs so that tolls have to increase, the Americans are going to pay for that in terms of higher cargo costs or loss of business with respect to exports to the extent that our costs go up higher. Would you not agree with that?

Mr. KUJAWA. Well, the extent to which——

Mr. TREEN. We take an accounting procedure that minimizes costs, writes off all of this, and minimizes what has to be paid to the United States. Then tolls will be lower. If we load it up, tolls will be higher, generally speaking, if you are going to operate without deficit.

Mr. KUJAWA. That is correct. you face the difficult complex question of who bears that toll increase, the producer or the consumer. Japan exports a TV to the United States, and the tolls go up. Does the price go up in the United States or does the Japanese profit margin go down?

Mr. TREEN. Generally speaking the consumer pays all the costs ultimately.

The U.S. Government does not keep a balance sheet on its assets. We have never made a tabulation of the assets, like the canal, this building, and depreciated it, have we? Are we not talking about good will, the driving force of this treaty?

I am not arguing the case for it. I am saying that was the motivation of the administration, the good will, value to the United States. in terms of international relations, was the driving force for this. You might make a case we should put on our balance sheet $5 billion of good will.

What I am trying to demonstrate is that, and not in a very artful way, we really have a political situation here. We could talk about all sorts of accounting procedures. You might even defend that, well, we bought good will. It cost us $5 billion, $400 million, whatever we think the value is, and put that down on the asset ledger of the United States of America.

You could go anyway you want. The American public will pay. We will pay through the tolls or we are going to pay by simply passing on these assets without recovering them, one way or the other.

I guess I really have not asked a question.

I think one of the things we have to zero in on is the long-term effects of tolls on the U.S. customers. We will pay one way or the other.

Mr. Steers. You said that two-thirds of the traffic is U.S. oriented one way or another.

Therefore, one-third of the costs must be borne by someone else. The United States has the option of paying two-thirds or 100 percent. Further to purchase an item the cost of which includes canal tolls is far different that the taxpayer as a group paying for canal operations.

Mr. Treen. To that extent you are correct.

One thing I asked before of some State Department people, whether we might load up the tolls of cargo not originating in or destined to the United States. That is kind of the way I would like to do it, load up that other third. Thank you.

Mr. Hubbard. Thank you Congressman Treen.

Does any other member have a question for these two distinguished witnesses?

[No response.]

Mr. Hubbard. Then if not, thank you very much, Leonard Kujawa, of Arthur Andersen & Co. and Phillip Steers, Jr., former Financial Vice President of the Panama Canal Company, for your excellent testimony and answers to our questions.

INTRODUCTION OF PORT PANEL

At this time we will be introducing the panel of port officials. I will call on three distinguished Members of Congress who are with us today.

First we have with us a member of our full Merchant Marine and Fisheries Committee, Barbara Mikulski.

STATEMENT OF HON. BARBARA MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Ms. Mikulski. Thank you very much, Mr. Chairman.

I would like to compliment you on the quality of hearings and the leadership you have exerised on this particular subcommittee. I am particularly delighted to know that you have invited people to testify who are going to be the most effective. My compliments to you as a chair.

I am pleased to introduce to the subcommittee Mr. Richard A. Lidinsky, Jr., assistant director of transportation, Maryland Port Administration and chairman of the Panama Canal Committee of the North Atlantic ports Association. Mr. Lidinsky has served as the port's attorney for over 3 years and is a specialist in maritime regulatory law, having served prior to that in the general counsel's office of the Federal Maritime Commission.

Mr. Lidinsky's testimony is given not only on behalf of my district, which encompasses the Port of Baltimore, but is also on behalf of the NAPA, which represents all major port authorities and terminals from Maine to Virginia, including the world ports of Boston, New York, Philadelphia, Baltimore, and Virginia. In his statement, which I have read and endorsed, there is present a theme which I am certain this subcommittee is in full agreement with—our country has a commitment to honor the ratified Panama Canal treaties; however, there must be present in the implementing legislation necessary mechanisms to insure that the canal remain a viable tool for U.S. international commerce, particularly that segment moving from the Far East to the Atlantic coast. These cargo movements account for nearly one-third of canal traffic and revenues and has already been dissipated by alternate services such as minibridge, which will certainly increase if canal tolls rise astronomically in the next 20 years.

In the Port of Baltimore alone we have over 6 million tons of cargo a year going to or from areas of the world through the canal. Based on 1976 statistics, over 9,000 jobs and an economic impact on our State of nearly $250 million is linked to canal traffic. Therefore, I urge this subcommittee to give Mr. Lidinsky and his copanelists your fullest attention.

I would like to submit the rest of my statement of introduction for the record.

Mr. HUBBARD. Thank you very much, my distinguished colleague.

Mr. Lidinsky, before you testify, permit us to let the other visiting Members of Congress to introduce their guests.

I am going to introduce now Mrs. Lindy Boggs, the outstanding and highly respected and beloved Congresswoman from New Orleans, to introduce her guest.

STATEMENT OF HON. LINDY BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mrs. BOGGS. Thank you so much, Mr. Chairman.

It is a pleasure to be here today. The purpose of my appearance is not to address the issue of whether the Congress should enact the legislation necessary to implement the Panama Canal Treaties of 1977. Those treaties have been signed by the President and ratified by two-thirds of the Senate in accordance with our Constitution. I think we all fully appreciate the legal and political implications of the legislation currently before this subcommittee that will provide the basis for implementing the treaties.

Rather, the purpose of my appearance—along with the distinguished members of the panel you will hear from this morning—is to focus attention on the very serious economic aspects of the treaties.

Mr. Chairman, I have the privilege of representing major portions of the city of New Orleans and Jefferson Parish. The area that we refer to as New Orleans and the river region is highly dependent on the health of our international trade. The inclusion or omission of certain provisions in the implementing legislation could have a profound impact on the continued well-being of this world trade.

Essentially, our concern is this: Any exorbitant toll increase without sufficient consideration given to trade ramifications may cause severe economic dislocation in this country.

I think it is generally agreed that the tolls will have to be increased in order to comply with the obligations imposed by the treaties. However, I hope we all clearly recognize that such future toll rates will directly determine the degree to which the Panama Canal remains a viable waterway in international trade and commerce It is, therefore, crucial that we make clear the factors which are important in determining future toll rates, along with the procedure that must be followed in accomplishing any adjustments.

One of my colleagues from Louisiana, Senator Russell Long, was instrumental in securing the acceptance of an understanding to the interpretation of article III of the Neutrality Treaty. This understanding requires that the effects upon short and long-term trade patterns of the United States and Panama be considered before any toll adjustment is made. The understanding further provides that the costs of operating and maintaining the canal and the competitive position of the canal vis-a-vis other means of transportation also be among the factors considered in the toll rate changes.

Now we are at a key juncture in the consideration of the toll issue We must insure that any toll adjustments will be adopted only after careful thought and study is given to the effect these changes would have on the total trading postures of both the United States and the Republic of Panama. In addition, we must insure that there are adequate safeguards against unreasonable escalation in tolls.

Mr. Chairman, two of the gentlemen appearing before the subcommittee today are from New Orleans. One, Herb Haar, will give you a perspective on the problem from the port operations side. Mr. Haar is the associate director of the Port of New Orleans and a leader in the American Association of Port Authorities. In addition, he served a very distinguished career with the U.S. Army Corps of Engineers, culminating with a tour of duty as the District Engineer for the New Orleans District, probably the most important billet of its type in the corps.

You will also hear from Capt. J. W. Clark, president of Delta Steamship Lines—an aggressive leader in sailing the American-flag merchant fleet to all parts of the world, in particular to Latin America. In addition, Captain Clark has been a leader in such trade supportive organizations as the International Trade Mart and the International House in New Orleans.

I trust this subcommittee will find the information presented by these gentlemen, along with the other members of the gulf and Atlantic ports panel, to be of value in your current deliberations. I stand ready to work with you to insure the rational stability of the Panama Canal toll setting process so that we will continue to have a thriving international trade transiting the Panama Canal.

Thank you.

Mr. HUBBARD. Thank you very much, Lindy Boggs.

Lastly to introduce guests of the panel, the pride of South Carolina, our distinguished friend and colleague Mendel Davis. Thank you for being with us,

STATEMENT OF HON. MENDEL J. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. DAVIS. I would associate myself with the comments of my colleagues about you, Mr. Chairman, and this committee, and the real tasks you have. We are lucky to have people like you who are willing to face up to important decisions and take guidance and hear testimony so the rest of us can act on it as needed in the future. You are doing a tremendous job.

Mr. Chairman, thank you for the opportunity to appear here this morning before your subcommittee on this critical issue.

I am particularly honored this morning to introduce to you Greg Prior of the South Carolina Ports Authority at Charleston. Mr. Prior represents one of the most important ports on the Atlantic seaboard—the 12th largest in dollar volume in the United States. Consequently, he is vitally interested in this question of the Panama Canal Treaty implementation. Mr. Prior appears here this morning as a spokesman for the South Atlantic and Caribbean Ports Association and will address the issue of toll levels and their impact on port facilities, as well as other concerns in the Panama Canal Treaty implementing legislation.

Shipping and port interests have a proper concern for these matters. While that is true, they are also rightfully concerned from the view of American citizens because the Panama Canal has historically been of huge importance to this Nation's economy and national security.

I am sure Mr. Prior will do a very, very creditable job of giving his imprint on the testimony you need to have.

Mr. TREEN. As a member from the Greater New Orleans Port area, too, I would like to say welcome.

Mr. HUBBARD. Thank you, Congressman Treen, and special thanks again to these three Members of Congress who have been kind enough to introduce their guests. We also have a statement from Congressman Jack Edwards that we would like to enter at this point in the record without objection.

[The statement follows:]

STATEMENT OF HON. JACK EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, I am pleased to have an opportunity to participate in these hearings, and I would like to bring to your attention some of the special concerns the ports in our Gulf Coast area have with the new Panama Canal legislation. I understand that the Gulf Ports Association is scheduled to testify in more detail on the specific amendments its 23 member ports are supporting.

The Port of Mobile, located within my Congressional District, and other ports along the Gulf and Atlantic Coasts, stand to lose considerable cargo if tolls for Panama Canal transit are increased to the point that West Coast shippers decide to send their cargo instead by truck or by rail. About 20 percent of the commerce through Gulf Coast ports currently travels through the Canal, and that represents a sizeable portion of our ports' revenues. If West Coast shippers use alternative transportation routes, Canal tolls would be forced even higher. In some extremely competitive markets, higher tolls might discourage some buyers who currently use our Gulf Coast ports from even importing at all from the United States, and this could affect our balance of payments.

I believe we need stronger procedures for Congressional oversight than are contained in the Administration's bill. I support the provisions of H.R. 111 with respect to Congressional oversight, in particular the provisions for advance publication and public hearings on the proposed toll increases. In addition, I believe that reports on toll increases should be made to the appropriate Congressional committees, showing that the factors required to be considered by the long understanding have indeed been weighed. In addition to this oversight of toll increases, I believe we need definite percentage limits on the toll increases. Officials of the Port of Mobile tell me that no more than 27 percent interim increase in tolls during the first year that the Treaty is in effect, and no more than 11 percent each year thereafter, is a reasonable level. I would appreciate your Committee's considering that recommendation carefully.

My concern with the impact this new legislation will have on the Port of Mobile is twofold. Not only do we need better checks and balances on the procedures for increasing tolls. We also need to ensure that the interests of those most directly affected by the Treaties will be represented on the administrative boards of the new Canal Commission. The Supervisory Board should include at least two U.S. members from the Atlantic or Gulf Coast areas, one engaged in the management or operation of a U.S.-flag steamship line, and one in a major export or import business which relies on the Panama Canal as a principal transportation route. With respect to the membership of the Consultative Committee, I support the provisions of H.R. 111. I believe that the appointees to these administrative boards will be more responsive and more familiar with the impact of Canal activities here at home if they are selected from the user and industry sector rather than chiefly from among Federal Government personnel.

I am certain that this Committee realizes what a great impact the Panama Canal treaties will have on U.S. ship traffic, and I would appreciate your reviewing closely the particular impact they will have on Gulf Coast ports such as the Port of Mobile. I am hopeful that this Committee will exercise its responsibility to the fullest to keep the costs of the implementing legislation as low as possible, and to minimize the impact of it on our economy, in particular, on our domestic ports.

On another note, I would like to add also that I support the legislation which has been introduced to require Congressional approval of all transfers of U.S. property under the Treaties. I believe that such provisions should be included in the final implementing legislation.

Again, thank you for this opportunity to present my views.

Mrs. BOGGS. I read with great interest your report, Mr. Brandes. And we are very pleased you are joining us today.

Mr. HUBBARD. Indeed we do thank you, and we will take you gentlemen in the order you were introduced.

First, Mr. Lidinsky.

Mr. LIDINSKY. We have agreed among ourselves to go in a particular order, with the Chair's permission.

Mr. HUBBARD. OK, you may proceed however you wish.

Colonel Haar?

STATEMENTS OF A PANEL CONSISTING OF HERBERT R. HAAR, JR., ASSOCIATE PORT DIRECTOR, PORT OF NEW ORLEANS; RICHARD LIDINSKY, JR., ASSISTANT DIRECTOR OF TRANSPORTATION, MARYLAND PORT ADMINISTRATION; J. GREGORY PRIOR, EXECUTIVE ASSISTANT, PORT OF CHARLESTON; AND ELY M. BRANDES, PRESIDENT, INTERNATIONAL RESEARCH ASSOCIATES

Colonel HAAR. I wish to thank you for the kind introductions. It is a pleasure to be here today and we appreciate having the opportunity to testify before your subcommittee.

I would like to introduce Mr. Reed, port director, Port of New Orleans, who is here with us today, and also introduce Captain Clark, who is one of our port commissioners. I am very pleased that they are both here.

Six States and 23 individual ports are represented by the Gulf Ports Association, Inc. Collectively, these ports are moving 37 percent of all waterborne commerce in the Nation—over $50 billion in world trade.

These ports also export over 62 percent of all grain exported from the United States, of which approximately one-third moves overseas via the Panama Canal.

Additionally, the Port of New Orleans is the No. 1 importer in the United States of iron and steel products, and 72 percent of these imports arrive via the Panama Canal. U.S. Customs revenues collected from gulf ports amounted to more than $450 million in 1975.

Considering the fact that the ports which belong to the Gulf Ports Association, Inc., have invested approximately $1 billion in facilities to accommodate trade and U.S. revenue collections of such magnitude, it is deemed proper that these same ports should have a voice in the final terms approved for the new Panama Canal Treaty.

In regard to answers to the five questions under the port representatives group that you asked me to address, I will attempt to provide detailed responses to questions 1 and 5, and in a broad sense only on questions 2, 3, and 4.

More detailed information will be furnished by other members of our port panel here with me today.

I have checked with a number of other major ports in the gulf, a major grain exporting company, our port economic consultant, and several of our overseas Port of New Orleans offices in developing the material that follows. I have enclosed the highlights of gulf/Atlantic port amendments that we will collectively be recommending to you today.

The major commodities to and from our area that would be impacted by an increase in tolls are petroleum, coal, grain, steel, and bauxite.

The port director at Mobile, Ala., stated that his port has one large exporter of coal who shipped 3 million tons in 1978 to Japan who is most concerned with the competitiveness of his coal with Australian and Canadian coal on world markets with the projected increases in tolls through the Panama Canal.

Also, Mobile imported 1 million tons of Australian coal in 1978 that moved through the Panama Canal. Oil from the North Slope in Alaska is moving by supertankers to the west coast of Panama and is offloaded for transshipment to gulf ports.

It is also moving over this full route in conventional size tankers.

Higher tolls in the canal could easily upset the economics of this operation and speed the alternative shipment of this oil by pipeline from southern California ports or justify a pipeline across Central America.

This, in turn, would reduce one of the major sources of revenue for the Panama Canal which, in turn, would force the tolls upward even further in order to fund the required annual payment to Panama by the United States.

I have already touched on the size of grain movements from the gulf ports, and these movements, I am told from a number of sources, are most sensitive to competitive pricing with grain grown in Brazil, Argentina, Canada, and Australia. The world grain market works on a spread based on the commodity price itself and freight cost.

Anything that increases the freight reduces this spread. Therefore, any significant increase in overall grain prices, as a result of increased tolls and new Federal inspection costs could result in important changes in the United States' share of the world market for various grains that we have traditionally exported in very large quantities and which are helping to offset some of our balance-of-payments deficit.

The Port of New Orleans' overseas offices report that a number of countries that we traditionally trade with in Latin America may search for suppliers and market in countries that have transportation connections without the use of the Panama Canal, if they are faced with substantially higher oceangoing costs as a result of Panama Canal toll increases.

A number of major steamship lines are studying the potential impacts of toll increases and are looking at alternatives to present routings which will have the effect of both reducing the use of the canal and raising the costs of higher alternative routings of their traditional business.

In this regard, Lykes Line of New Orleans has recently—see enclosed magazine article—purchased three new RO/RO ships to enter transpacific trade from west coast ports

In regard to your first question as to the impact that increases in Panama Canal tolls have on the gulf, South Atlantic and North Atlantic port areas, I have had the enclosed figures—see enclosure No. 3—developed by our port economic consultant who has used a recent U.S. Maritime Administration sponsored study as a basis for the projections.

In summary, the impact for the gulf area is 66,079 jobs and $2.8 billion; on the South Atlantic area is 3,456 jobs and $91 million; and for the North Atlantic area is 41,295 jobs and $1.1 billion.

In total, the overall impact on the three subregions is 110,838 jobs and $4.7 billion.

Questions 2 and 3 will be answered by Dr. Ely Brandes, president of the International Research Associates, who is part of our port panel.

I would like to say though on these two questions that an interim toll adjustment after the effective date of the treaty should be limited to 27 percent of the tolls in effect on January 1, 1979, and that the tolls thereafter should not exceed 11 percent in any given 12-month period unless necessary to pay fixed annuity to the Panama Canal Treaty and these increases should not be made until certain conditions as outlined in my enclosure have been met.

In regard to question 4, the detailed answer to this will also be provided by another member of our port group, but I would like to say generally that we desire more explicit provisions for toll adjustments and measurement rules as outlined in my enclosure.

In response to your fifth question: "How should the concerns of the ports and the maritime interests of the United States be reflected in the decisionmaking structure for canal matters?" We would recommend that at least two of the five U.S. members of the new Panama Canal Commission be from the Atlantic or gulf areas, one engaged in the management or operation of an American-flag steamship line and the other in a major import or export business depending on the Panama Canal as a principal transportation route.

We additionally recommend that members be reappointed by the President of the United States for 4-year terms, with the advice and consent of the Senate and to serve at the pleasure of the President.

We think that it is interesting that starting in the early 1950's, that the Directors of the Panama Canal Company generally were from the business community and not the governmental sector.

It was only upon the start of the Carter administration that this procedure was changed to make these Directors Federal Government personnel. We believe that this is not proper and does not provide a good basis for industry and user input into the decisionmaking process.

What we are proposing will allow a balance in this regard by requiring that at least two of the new Panama Canal Commission members be from the user industry sector.

We also believe that the consultative committee should be appointed in the manner outlined in Congressman Murphy's bill rather than as outlined in the administration's bill. This procedure, we believe, would also insure a more sympathetic and responsive membership than what could occur under appointments made as permitted by the administration's bill.

It is not merely a local adverse economic impact with which we are concerned. We feel that new major increases in Panama Canal tolls will have an adverse financial impact on the interior of the country, on international business, on our balance of foreign trade and on our energy problems—all of which are of national concern.

We at the Port of New Orleans and throughout the State of Louisiana are keenly aware of the adverse economic impacts which will accompany further Panama Canal toll increases because we sit at the crossroads of America's inland waterway system.

The Port of New Orleans, due to its geographical location near the mouth of the Mississippi River and at the crossroads of the gulf Intercoastal Waterway, services the midcontinent of North America.

Historically, it has gathered the products of mid-America and shipped them overseas in deep draft bottoms and in return, distributed the products from overseas to the industries and cities of the midcontinent. Its geographical location makes it the natural gateway for the commerce of mid-America and also makes it logistically all important in times of war and imposes on it major defense responsibilities.

In order to put the Mississippi River system into perspective, let's look at some statistics.

The U.S. port industry handles approximately 1.9 billion tons of commerce annually. The total tonnage of commerce moved on inland waterways is approximately 600 million tons annually. The net inland traffic on the main channels and all tributaries of the Mississippi, Illinois, Missouri, and Ohio rivers is 300 million tons annually.

Inland traffic on the gulf Intracoastal Waterway, which connects with the Mississippi River at New Orleans, amounts to 100 million tons annually.

The inland waterway system described above connects to an oceangoing transportatation system 200 miles from the gulf on the Mississippi River at Baton Rouge, La.

Below Baton Rouge, the river has natural depths exceeding 120 feet and widths exceeding 2,000.

In this stretch of the Mississippi River, we find the Port of Baton Rouge, fourth largest in the Nation, and the Port of New Orleans, second largest in the Nation.

Traffic in this oceangoing segment of the Mississippi River system is intense.

In 1976, traffic on the Mississippi River from Baton Rouge to but not including New Orleans totaled 244 million tons and traffic on the Mississippi River from New Orleans to the Mouth of Passes—Gulf of Mexico—totaled 233 million tons. Thus, the total traffic on the oceangoing portion of the Mississippi River system in 1975 was 477 million tons, which is equivalent to two-thirds of the total U.S. inland waterborne commerce.

In 1977, the value of the trade on the lower Mississippi was $22 billion. In 1977, there were 14,000 oceangoing vessels and over 100,000 barges moving on waterways through the New Orleans area. The total value of all foreign trade in the lower Mississippi is $22 billion, export and import.

The estimated $30 billion worth of agricultural commodities and products exported during the fiscal year ending June 30, 1977, is a tribute to the energy, sales ability and traditional trading spirit of the American agricultural community.

Exports provide markets for nearly 60 percent of the U.S. annual wheat crop; 55 percent of the rice; half of the soybeans; more than one-third of the cotton and tobacco; and one-fourth of the feed grains we produce.

About one-fifth of 1975 farm cash receipts resulted from agricultural exports. Production from nearly one out of every three harvested acres is sold abroad. Because of balance of payments requirements, U.S. land devoted to export crops and livestock is increasing by millions of acres annually.

The vast network of support and service companies and organizations that link American farms to consumers beyond our borders benefits from exports. Businesses that include agricultural machinery and chemicals manufacturers; the packaging and container industries; the transportation system; international banks; forwarders; brokers; and the small army of marketers, promotion specialists, and commercial representatives who travel the world probing for new or expanding markets for American farm products, all benefit from exports.

Every additional billion dollars realized from an export sale generates 50,000 additional jobs at home, according to the Food and Agricultural Export Directory, USDA Foreign Agricultural Service, May 1976.

Movement of a substantial portion of the total annual agricultural exports to world markets occurs via ports on the Gulf of Mexico.

It is strongly recommended that the Congress not pass any implementing legislation without inclusion of the specific safeguards that I and other members of our port group here today recommend.

These amendments are needed so there will not be an adverse economic impact on American shipping and the American consumer.

We strongly feel that our foreign trade, balance of payments and gulf and Atlantic regional economies cannot stand, without major adverse impacts to the national interest, the possibility of large, uncontrolled increases in tolls for the Panama Canal after passage of the implementing legislation.

I appreciate very much having had the opportunity to present the views of the Gulf Ports Association, Inc., and the Port of New Orleans to the subcommittee today.

Thank you very much.

Mr HUBBARD. Thank you very much, Colonel Haar, for your statement.

[The following was received for the record:]

STATEMENT FOR
PANAMA CANAL SUBCOMMITTEE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

HEARINGS ON PANAMA CANAL TREATY IMPLEMENTING LEGISLATION
WASHINGTON, D. C.
MARCH 7, 1979

BY
HERBERT R. HAAR, JR.
ASSOCIATE PORT DIRECTOR
PORT OF NEW ORLEANS

ON BEHALF OF
THE GULF PORTS ASSOCIATION, INC.
AND THE
PORT OF NEW ORLEANS

PORT OF NEW ORLEANS
CENTROPORT U.S.A.

I am Herbert R. Haar, Jr., Associate Port Director, Port of New Orleans, and I am presenting this statement on behalf of the Gulf Ports Association, Inc. (GPA) and the Port of New Orleans.

Six states and twenty-three individual ports are represented by the Gulf Ports Association, Inc. Collectively these ports are moving 37 per cent of all waterborne commerce in the Nation - over $50 billion in world trade. These ports also export over 62 per cent of all grain exported from the United States of which approximately one-third moves overseas via the Panama Canal. Additionally, the Port of New Orleans is the number one importer in the U.S. of iron and steel products and 72 per cent of these imports arrive via the Panama Canal. United States Customs revenues collected from Gulf ports amounted to more than $450 million in 1975.

Considering the fact that the ports which belong to the Gulf Ports Association, Inc. have invested approximately one billion dollars in facilities to accommodate trade and United States revenue collections of such magnitude, it is deemed proper that these same ports should have a voice in the final terms approved for the new Panama Canal Treaty.

In regard to answers to the five questions under the Port Representatives Group that you asked me to address, I will attempt to provide detailed responses to questions 1 and 5 and in a broad sense only on questions 2, 3 and 4. More detailed information will be furnished by other members of our port panel here with me today. I have checked with a number of other major ports in the Gulf, a major grain exporting company, our port economic consultant and several of our overseas Port of New Orleans offices in developing the material that follows. I have enclosed the highlights of Gulf/Atlantic port amendments that we will collectively be recommending to you today.

The major commodities to and from our area that would be impacted by an increase in tolls are petroleum, coal, grain, steel and bauxite.

The Port Director at Mobile, Alabama stated that his port has one large exporter of coal who shipped three million tons in 1978 to Japan who is most concerned with the competitiveness of his coal with Australian and Canadian coal on world markets with the projected increases in tolls through the Panama Canal. Also, Mobile imported 1 million tons of Australian coal in 1978 that moved through the Panama Canal. Oil from the north slope in Alaska is moving by supertankers to the west coast of

Panama and is off-loaded for transshipment to Gulf ports. It is also moving over this full route in conventional size tankers. Higher tolls in the Canal could easily upset the economics of this operation and speed the alternative shipment of this oil by pipeline from southern California ports or justify a pipeline across Central America. This, in turn, would reduce one of the major sources of revenue for the Panama Canal which, in turn, would force the tolls upward even further in order to fund the required annual payment to Panama by the United States.

I have already touched on the size of grain movements from the Gulf ports and these movements, I am told from a number of sources, are most sensitive to competitive pricing with grain grown in Brazil, Argentina, Canada and Australia. The world grain market works on a spread based on the commodity price itself and freight cost. Anything that increases the freight reduces this spread. Therefore, any significant increase in overall grain prices, as a result of increased tolls and new Federal inspection costs could result in important changes in the United States' share of the world market for various grains that we have traditionally exported in very large quantities and which are helping to offset some of our balance of payments deficit.

The Port of New Orleans' overseas offices report that a number of countries that we traditionally trade with in Latin America may search for suppliers and markets in countries that have transportation connections without the use of the Panama Canal, if they are faced with substantially high oceangoing costs as a result of Panama Canal toll increases. A number of major steamship lines are studying the potential impacts of toll increases and are looking at alternatives to present routings which will have the effect of both reducing the use of the Canal and raising the costs of higher alternative routings of their traditional business. In this regard, Lykes Line of New Orleans has recently (see enclosed magazine article) purchased 3 new Ro/Ro ships to enter trans-Pacific trade from west coast ports.

In regard to your first question as to the impact that increases in Panama Canal tolls have on the Gulf, South Atlantic and North Atlantic port areas, I have had the enclosed figures (see enclosure No. 3) developed by our port economic consultant who has used a recent U. S. Maritime Administration sponsored study as a basis for the projections. In summary, the impact for the Gulf area is 66,079 jobs and 2.8 billion dollars; on the South Atlantic area is 3,456 jobs and 91 million dollars; and for the North Atlantic area is 41,295 jobs and 1.1 billion dollars. In total, the overall impact on the three subregions is 110,838 jobs and 4.7 billion dollars.

Questions 2 and 3 will be answered by Dr. Ely Brandes, President of International Research Associates, who is part of our port panel. I would like to say though on these 2 questions that an interim toll adjustment after the effective date of the treaty should be limited to 27% of the tolls in effect on 1 January 1979 and that the tolls thereafter should not exceed 11% in any given 12 month period unless necessary to pay fixed annuity to the Panama Canal Treaty and these increases should not be made until certain conditions as outlined in my enclosure have been met.

In regard to question 4, the detailed answer to this will also be provided by another member of our port group but I would like to say generally that we desire more explicit provisions for toll adjustments and measurement rules as outlined in my enclosure.

In response to your 5th question, "How should the concerns of the ports and the maritime interests of the United States be reflected in the decision-making structure for Canal matters?", we would recommend that at least 2 of the 5 U. S. Members of the new Panama Canal Commission be from the Atlantic or Gulf areas, one engaged in the management or operation of an American flag steamship line and the other in a major import or export business depending on the Panama Canal as a principal transportation route. We additionally recommend that members be reappointed by the President of the United States for 4 year terms with the advice and consent of the Senate and to serve at the pleasure of the President.

We think that it is interesting that starting in the early 1950's that the directors of the Panama Canal Company generally were from the business community and not the governmental sector. It was only upon the start of the Carter Administration that this procedure was changed to make these directors Federal Government personnel. We believe that this is not proper and does not provide a good basis for industry and user input into the decision making process. What we are proposing will allow a balance in this regard by requiring that at least 2 of the new Panama Canal Commission Members be from the user industry sector. We also believe that the consultative committee should be appointed in the manner outlined in Congressman Murphy's bill rather than as outlined in the Administration's bill. This procedure, we believe, would also ensure a more sympathetic and responsive membership than what could occur under appointments made as permitted by the Administration's bill.

It is not merely a local adverse economic impact with which we are concerned. We feel that new major increases in Panama Canal tolls will have an adverse financial impact on the interior of the country, on international business, on our balance of foreign trade and on our energy problems -- all of which are of national concern. We, at the Port of New Orleans, and throughout the State of Louisiana, are keenly aware of the adverse economic impacts which will accompany further Panama Canal toll increases because we sit at the crossroad of America's inland waterway system.

The Port of New Orleans, due to its geographical location near the mouth of the Mississippi River and at the crossroads of the Gulf Intracoastal Waterway, services the mid-continent of North America. Historically, it has gathered the products of mid-America and shipped them overseas in deep draft bottoms and in return, distributed the products from overseas to the industries and cities of the mid-continent. Its geographical location makes it the natural gateway for the commerce of mid-America and also makes it logistically all important in times of war and imposes on it major defense responsibilities.

In order to put the Mississippi River System into perspective, let's look at some statistics. The U. S. port industry handles approximately 1.9 billion tons of commerce annually. The total tonnage of commerce moved on inland waterways is approximately 600 million tons annually. The net inland traffic on the main channels and all tributaries of the Mississippi, Illinois, Missouri and Ohio Rivers is 300 million tons annually. Inland traffic on the Gulf Intracoastal Waterway, which connects with the Mississippi River at New Orleans, amounts to 100 million tons annually. The inland waterway system described above connects to an oceangoing transportation system 200 miles from the Gulf on the Mississippi River at Baton Rouge, Louisiana. Below Baton Rouge, the river has natural depths exceeding 120 feet and widths exceeding 2,000. In this stretch of the Mississippi River, we find the Port of Baton Rouge, fourth largest in the nation, and the Port of New Orleans, second largest in the nation. Traffic in this oceangoing segment of the Mississippi River System is intense. In 1976, traffic on the Mississippi River from Baton Rouge to but not including New Orleans totaled 244,000,000 tons and traffic on the Mississippi River from New Orleans to the Mouth of Passes (Gulf of Mexico) totaled 233,000,000 tons. Thus the total traffic on the oceangoing portion of the Mississippi River System in 1975 was 477 million tons, which is equivalent to two-thirds (2/3) of the total U. S. inland waterborne commerce. In 1977, the value of the trade on the lower Mississippi was $22 billion. In 1977, there were 14,000 oceangoing vessels and over 100,000 barges moving on waterways through the New Orleans Area. The total value of all foreign trade in the lower Mississippi is $22 billion (export and import).

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Movement of a substantial portion of the total annual agricultural exports to world markets occurs via ports on the Gulf of Mexico.

It is strongly recommended that the Congress not pass any implementing legislation without inclusion of the specific safeguards that I and other members of our port group here today recommend. These amendments are needed so there will not be an adverse economic impact on American shipping and the American consumer. We strongly feel that our foreign trade, balance of payments and Gulf and Atlantic regional economies cannot stand, without major adverse impacts to the national interest, the possibility of large uncontrolled increases in tolls for the Panama Canal after passage of the implementing legislation. I appreciate very much having had the opportunity to present the views of the Gulf Ports Association, Inc. and the Port of New Orleans to the Subcommittee today.

Thank you.

*Source; Food and Agricultural Export Directory, USDA
Foreign Agricultural Service, May 1976.

3 Enclosures

HIGHLIGHTS OF LEGISLATION TO IMPLEMENT THE PANAMA CANAL TREATY OF 1977

TREATY	ADMINISTRATION BILL H.R. 1716	CONG. MURPHY'S BILL H.R. 111	GULF/ATLANTIC AMENDMENTS
Supervisory Board of Panama Canal Commission composed of 9 members: 5 U.S. nationals and 4 Pan. nat. appointed by U.S. (Pan. nat. proposed by R/Pan.) III.3(a).	Board to manage affairs of Pan. Canal Comm. appointed per treaty III.3., by Pres. of U.S. and serving at his pleasure. May be officer or employee of U.S. Sec. 205.	Board appointed by Pres. with advice and consent of Senate, serving at pleasure of Pres. Sec. of Defense (or his designated rep.) is member and directs Bd. No other member may be employee or official of U.S. or Pan. Sec. 102.	Board members appointed or reappointed by Pres. for 4-year terms, with advice and consent of Senate, and serve at pleasure of Pres. At least 2 of the 5 U.S. members shall be from the Atlantic or Gulf areas, one engaged in the management or operation of an American flag steamship line and the other in a major import or export business depending on the Pan. Canal as a principal transportation route.
	Quorum is majority of Bd. members of which maj. present are U.S. nat. Sec. 206.	Quorum same as Adm. Bill. Sec. 102.	
Administrator U.S. nat. and Dep. Adm. Pan. nat. until 1/1/90, then positions reversed. Pan. nat. proposed by R/Pan. III.3(c).	Adm. and Dep. Adm. appointed by Pres. and serve at his pleasure. Sec. 207. (Subject to Treaty re Pan. nat.)	Adm., Dep. Adm. and Chief Engineer appointed by Pres. with advice and consent of Sen. The Adm. serves at pleasure of Pres. Sec. 103, 104. (Subject to Treaty re Pan. nat.)	
Consultative Committee advises gov. of U.S. and Pan. on policy matters, including general tolls policy. Composed of equal no. of high-level rep. of U.S. and Pan. III.7.	Consultative Comm. U.S. rep. designated by Pres. and participation coordinated by Sec. of State. Sec. 101.	Consultative Comm. has 5 U.S. rep. and 5 Pan. rep. Of the U.S. rep: 2 appointed by Pres. pro tem. of Senate; 2 appointed by Speaker of House of Rep; 1 appointed by Pres. of U.S. The 2 rep. from Senate and House respectively shall not be of same political party. Members serve at pleasure of appointing officer. Sec. 105.	Cons. Comm. - support Cong. Murphy's Bill.
Treaty provides no procedure for Congressional oversight of appointments to Commission or of actions or policies of Comm.	No procedure for Congr. oversight.	Congr. oversight: Appointments subject to advice and consent of Sen. Congr. appointments to Consultative Comm. Proposed actions of Cons. Comm. submitted in writing to Pres. and thence to Congress. Either House of Congress may disapprove proposed action by Cons. Comm. Sec. 105.	Congr. oversight - support Cong. Murphy's Bill. Additionally, for tolls increases, after public hearing, report to Congr. committees showing economic justification and detailed consideration of factors enumerated in Long Understanding.
Tolls-U.S. may establish tolls and method of assessment. III.2(d) Also-Permanent Neutrality Treaty III.1(c) -tolls shall be just, reasonable and equitable.	Tolls prescribed by Pan. Canal Comm. (Treaty - Consultative Comm. advises on tolls.) upon 3 months' notice in Fed. Reg. and public hearing. Subject to and upon approval of U.S. Pres. Sec. 230.	Changes in tolls require advance publication and public hearing. Analysis showing basis and justification for changes shall be published also. Changes are submitted to Pres. for him to approve, disapprove or modify. Subject to judicial review. Sec. 413.	Tolls increases may not exceed (approximately 11%) in any given 12-mo. period (after interim toll adjustment) unless necessary to pay fixed annuity to Pan.-Treaty XIII.4(b). All increases require advance notice, publication of basis and economic justification, detailed consideration per Long Understanding, public hearing and report to Congr. committees.
Long Understanding: "Paragraph 1(c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors: (1) the costs of operating and maintaining the Panama Canal; (2) the competitive position of the use of the Canal in relation to other means of transportation; (3) the interest of both Parties in maintaining their domestic fleets; (4) the impact of such an adjustment on the various geographical areas of each of the two Parties; and (5) the interest of both Parties in maximizing their international commerce. The United States and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors."	Interim toll adjustment by Pan. Canal Co. subject to 3 mo. notice, if time permits, and public hearing. Sec. 231.	Interim toll adjusment by Pan. Canal Co. subject to essentially same procedures as above. Sec. 414.	Interim toll adjustment by Pan. Canal Co. or Pan. Canal Comm. to cover first year of operation after effective date of Treaty, limited to 27% of tolls in effect on 1/1/79.

2/12/79

SERVICE DETAILS:

Lykes To Offer 4 Sailings Monthly From West Coast To Far East; Call Most Ports Between Japan & Singapore

Vessels also to provide link between Hawaii and Far East; one group of ships to be routed to Japan, Korea, Taiwan, Hong Kong and Philippines; other group serving Southeast Asia area; headquarters in San Francisco; another office at Seattle; Michael D. Shea to be VP, West Coast Division.

The new Lykes Lines trans-Pacific service, scheduled to begin in the next 30 days from West Coast ports, will offer two sailings covering the route to Japan, Korea, Taiwan, Hong Kong and the Philippines, and two sailings on the route to Singapore, Malaysia, Indonesia and other Southeast Asian ports.

Ships in these services will also provide service between Hawaii and Far East ports, Lykes announced.

Although Lykes' ships have been operating in the Pacific and Far East since 1925, they previously had sailed only from New Orleans and other U.S. ports on the Gulf of Mexico. To provide for its first regularly scheduled West Coast service to the Far East, the company is assigning eight ships to the trade routes and expanding existing Lykes offices in San Francisco and Long Beach, California.

"Our West Coast headquarters will be in San Francisco, and we will open a new office in Seattle," said Joseph T. Lykes, Jr., chairman of the steamship company, now a subsidiary of LTV Corporation.

"We estimate we will require approximately 120 people to staff these offices, and we expect to employ residents of the West Coast wherever possible."

Of the eight ships to operate on the new routes, Lykes said, five will be of the Pacer or Clipper Class from the current operating fleet. The other three are the former States Line roll-on/roll-off cargo carriers, one of which will be purchased and two others chartered from the U.S. Maritime Administration.

Cash for the purchase of the additional ship for the Lykes fleet will come from funds already on deposit in Lykes' construction fund, the company said. "Deployment of five ships from the Lykes fleet will in no way impair the Lykes services from Gulf and Great Lakes ports," Lykes said.

Staff. Michael D. Shea, who has been on assignment in Hong Kong since 1977 as Far East Director of Lykes' operations in the Pacific, returns to the United States to head up the new West Coast organization as vice president of Lykes' West Coast Division.

He is a graduate of the U.S. Merchant Marine Academy and was assigned to Lykes fleet operations for five years before going to Hong Kong in 1970 as assistant operations manager. In 1973 he was named district manager of the Dallas office of Lykes, and in 1975 was transferred to Antwerp as deputy director for Continental Europe and the United Kingdom.

A. W. Hietala, now serving as assistant vice president of marketing in New Orleans, will replace Shea in Hong Kong as vice president of Lykes Lines Agency, a wholly-owned subsidiary of Lykes Bros. Steamship Company.

He is a graduate of Colombia University and joined the Lykes staff in 1956. In 1958 he was assigned to duties in Genoa, Italy; transferred to Liverpool in 1961 and returned to Genoa in 1964. In 1967 he was named director of Lykes' Mediterranean Area. He returned to the U.S. in 1974 as assistant vice president of Lykes' East Gulf Division in Mobile, and transferred to his New Orleans marketing assignment in 1977.

Lykes Names On Ships. The Ro/Ro ships assigned to the new service are the S/S *Arizona*, which will be renamed the *Lipscomb Lykes;* the S/S *Maine*, to be renamed the *Tyson Lykes*, and the S/S *Nevada*, to be renamed the *Charles Lykes*. The *Arizona* will be purchased by Lykes and the *Maine* and *Nevada* will be chartered for a period of 15 years.

The Ro/Ro ships are 684 feet in length and have a beam of 102 feet. Their deadweight is 19,543 long tons and they have a cargo capacity of 1,900,000 cu. ft. Their maximum shaft horsepower of 37,000 provides them with a design speed of 23 knots.

Cargo Capability. Each of the vessels has a 24-ft. wide stern ramp which permits cargo to be driven aboard under its own power. General cargo and containers are rolled aboard by using shipboard mobile equipment. Loading is fast and continuous. Cargo may also be loaded in two hatches by cranes. Each vessel accommodates 12 passengers.

Lykes has 13 Pacer and 12 Clipper Class ships in its presently operating fleet of 41 vessels. A combination of these will round out the eight ship fleet serving the new Lykes trade route.

The Pacers are combination container and breakbulk ships. They are 592 ft. long with a beam of 69 ft., a deadweight of 14,286 tons and have 783,711 cu. ft. of cargo space as well as deep tanks for 1,078 tons of liquid cargo. Some of the Pacers also have 16,362 cu. ft. of reefer space. They also have accommodations for 12 passengers.

The Clippers are highly-automated ships with heavy-lift capability of 88 tons. Two of this class can handle heavy lifts of 176 tons with their own gear. They are 540 ft. in length and have a beam of 76 ft. and a deadweight of 14,662 tons. Their total cargo capacity is 749,326 cu. ft. Liquid cargo tanks are also available. Each will accommodate four passengers.

The entire Lykes fleet provides container capability and the company has long-standing experience transporting extraordinary heavy lifts and oversize cargo from Gulf ports.

In addition to the new West Coast-Far East services, Lykes also maintains trade routes between U.S. Gulf ports and the Far East, the West Coast of South America, South and East Africa, the Mediterranean and Black Sea, and the United Kingdom and North Europe; between U.S. South Atlantic ports and the Mediterranean and Black Sea, and between the Great Lakes and the Mediterranean, Black Sea, Middle East and South America.

Lykes To Serve Central America

Lykes Lines will begin a direct monthly cargo service from U.S. Gulf ports to the West Coast of Central America in February.

The *S/S Elizabeth Lykes* will be the first ship on berth in the U.S. Gulf. Loading ports will be Houston, Galveston, Freeport, Pensacola, and New Orleans. Discharge ports will be the Nicaraguan port of Corinto and the port of Acajutla in El Salvador. The ship will then proceed to ports in the Far East.

Ships operating in this trade will also call at ports in Guatemala, Honduras and Costa Rica on an inducement basis.

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M/S Nedlloyd Rotterdam loading roll-on/roll-off cargo over its angled stern ramp on its maiden voyage out of New Orleans to the Mideast last month.

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Nedlloyd Expands U.S. Gulf/Mideast Ro/Ro Services

Nedlloyd Lines inaugurated an expanded service to the Mideast in December with the maiden voyage of the Ro/Ro ship *M/S Nedlloyd Rotterdam* from New Orleans.

The *Rotterdam's* Mideast ports of call include Jedda on the Red Sea; Dubai, Damman, Kuwait, and Bandar-Shapour on the Arabian/Persian Gulf.

The vessels in this new class of Ro/Ro ships joining the Nedlloyd fleet, have an overall length of 695 ft., an extreme breadth of 105 ft. and tonnage of 25,000 dwt. They have a maximum service speed of 20 knots.

Designed as three-deck Ro/Ro ships, they transport containers, trailers, rolling stock and heavy equipment. Vessels have eight-lane quarter stern ramps and the ship's on-board handling equipment includes fork lift trucks and tractors to reduce turn-around time. It can be completely unloaded in approximately six hours.

The *Rotterdam* will be joined on the U.S. run in March by the *M/S Nedlloyd Rochester*. With the addition of the new Ro/Ro vessels and three new multi-purpose carriers (MPC) to the Nedlloyd fleet, the company's cargo capacity on its U.S./Middle East run will have increased by more than 150%.

The company will have a total of four new MPC vessels joining its fleet this year. They include the *M/S Nedlloyd Bahrain, Baltimore, Bankok,* and *Barcelona*, the first three of which will be assigned to U.S./Middle East routes.

The new ships will be among the largest multi-purpose vessels afloat; each equipped with twin cranes, derricks and heavy lift gear with a capacity of 225 tons.

This fleet expansion will permit one Ro/Ro sailing per month and one MPC sailing per month. "Our fleet modernization program is but a part of the total picture changes we have made," J. Van Baarle, President of Nedlloyd, Inc., said.

"Nedlloyd, with its major agents, Strachan Shipping Co., in the Gulf, and Lavino Shipping Co., in the North Atlantic," he stated, "are expanding our respective staffs in order to provide more personalized service."

Nedlloyd, Inc., a wholly owned subsidiary of the Nedlloyd Group, is North American general agents for Nedlloyd Lines, Rottedam. Nedlloyd, Inc. recently completed a major reorganization to streamline its service to the shipping public.

The Rotterdam based parent, Nedlloyd Lines also reorganized and expanded its staffs throughout the Middle East. New offices, staffed by personnel from Holland, have been opened in Saudi Arabia, The Emirates, in Iran, and in other countries.

Mini-bridge. Effective January 27, Nedlloyd Lines began offering West Coast shippers a mini-land bridge service to the Middle East.

Utilizing railheads at Los Angeles, Oakland, Portland, Richmond and Seattle, cargo will be loaded at the port of Houston for Jeddah, Dubai, Damman, Kuwait and Bandar Shahpour.

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ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL

The Atlantic and Gulf Coast Ports of the United States handle approximately 66.5 million long tons annually which are routed through the Panama Canal. The potential loss of income and employment within the hinterlands of these ports, due to diversion of cargo flows, is estimated to total $4.7 billion representing 110,838 jobs annually.[1]

Nearly sixty percent of the impact will be felt among the ports of the Gulf Coast which handle nearly 40.0 million long tons annually while the North Atlantic and South Atlantic Coasts account for 37.3 and 3.1 percent respectively. The annual tonnages, direct and total dollar input ; and employment impact figures are presented by U.S. Coastal range as shown below.

WATERBORNE SHIPMENTS VIA PANAMA CANAL
ECONOMIC IMPACT SUMMARY
BY U.S. COASTAL RANGE

IMPACT MEASURE	TOTAL	NORTH ATLANTIC	SOUTH ATLANTIC	GULF COAST
Long Tons (1,000)	66,503	24,780	2,075	39,648
Direct Impact ($ millions)	2,926	1,090	91	1,745
Total Impact ($ millions)	4,682	1,745	146	2,791
Employment (Persons)	110,838	41,295	3,456	66,079
Percent	100.0	37.3	3.1	59.6

[1] Based on economic impact per ton figures developed by the New York/New Jersey Ports authority under contract with MARAD.

Mr. Hubbard. And now, Mr. Prior?

Mr. Prior. I would like to sbmit my written testimony for the record.

[The following was received for the record:]

Statement for Panama Canal Subcommittee, House Committee on Merchant Marine and Fisheries, on Behalf of the South Atlantic and Caribbean Ports Association by W. Don Welch, South Carolina Ports Authority

Thank you, Mr. Chairman. I am here today on behalf of the South Atlantic and Caribbean Ports Association. The Association represents major public and private terminals from North Carolina south, including the public ports authorities in North Carolina, South Carolina, Georgia, the Atlantic Coast of Florida, and the Virgin Islands.

The ports in the South Atlantic range approach the question of the Panama Canal Treaty Implementation from a unique perspective. Our ports serve an area which has for generations lagged behind the rest of the nation in industrial development. Per capita income, employment opportunities, and educational levels still stand considerably behind other regions. Our region is made up of economically developing states, striving to improve the opportunities available to their citizens.

Port developments by the public ports authorities in the South Atlantic states have been part of the overall economic improvement strategy for the region. Port facilities, funded by public capital, have been seen as major attractors of industrial investments. For example, in South Carolina, more than $6.3 billion has been invested in new or expanded industry since 1970. A substantial portion of this has been "reverse investment" by foreign-based firms engaged in manufacturing linked to international trade and using our ports. As a result, South Carolina while it ranks very low in the total capital invested in manufacturing, holds seventh place nationally in the total number of plants built with "reverse investment" capital.

In recent years, ports in the South Atlantic have generally concentrated their investments in facilities to handle containerized cargoes. This decision recognized the exceptional manner in which containerization serves high value commodities associated with manufacturing. Investment in containerization pays high returns in terms of the impacts of the regional economy, South Carolina has invested over $92 million in its ports, more than one-third in container facilities. An additional $58.5 million is in process now, almost all for containerization. The results of this investment on our state have been charted by economists at the University of South Carolina in a study just completed. This study identifies more than 42,000 jobs linked to port activities and port associated manufacturing. The statewide dollar value of this port impact is set at $1.3 billion. It is important to emphasize that throughout the South Atlantic range these capital investments in ports come from the state and local governments with no federal assistance. Yet the federal government is one of the principal beneficiaries. For example, it carries out of Charleston more than $120 million annually in customs receipts.

Outside the maritime community, little of the discussion on the Panama Canal Treaty has recognized that America transcontinental rail system presents a competitive transit mode to the canal, especially for containerized cargoes. The land-bridge, mini-bridge and the developing micro-bridge routings could compete with the canal both in cost and transit speed; generally the mini-bridge routings, which are priced at the all-water rate, are competitive even now. Theoretically, this potential competition could be expected to create an economic force that would keep canal tolls from reaching outrageous levels. However, if forces other than cost factors are allowed to dominate the toll setting decisions, tolls could reach a point where they seriously discourage the flow of traffic. For many commodities, the canal could quickly become just as dead as if it had been closed by an act of war.

At what point would that occur. The Port of Los Angeles has produced an economic analysis that supports Dr. Brandes' findings. Their study forecasts that substantial increases in tolls could produce a dramatic shift in trade patterns. Without a very detailed study, it is impossible to say with assurance which ports would gain or lose from this shift. But it is widely accepted in the port industry that the diversion of traffic would precipitously change the relationship between ports, leading to unemployment, under-utilized facilities and inability to pay off indebtedness.

Our statistics show that 500 of the 1,400 ships calling annually at our Ports Authority facilities in Charleston transit the canal. These ships carry close to 25 percent of the tonnage moving through our Charleston facilities. Thus the business moving through the canal would account for approximately 1,200 jobs in local port industry. Similar levels of involvement exist in the other South Atlantic ports.

In this light, the Long Understanding to the Treaty takes on heightened importance. The Understanding provides a basis for assuring that toll adjustments under the treaty give full consideration to the effects on the trade patterns of both the United States and Panama. This would include consideration of the relation of the canal to other means of transportation, such as the land-bridge. In addition, it would provide for an evaluation of the impacts of toll increases on various geographical areas of both nations.

To keep faith with the Long Understanding, the Implementation Legislation must contain provisions like those in Congressman Murphy's bill requiring advance publication and public hearings on toll changes.

During the debate on ratification of the treaty, advocates frequently forecast that the treaty would not result in outrageous or crippling toll increases. Advocates often cited a maximum figure of 30 percent. For this reason, Congress should take the opportunity of this Implementation Legislation to establish a reasonable limit of 27 percent of the tolls in effect on January 1 of this year as the interim toll adjustment, with an annual limit thereafter of 11 percent under normal circumstances.

The most important element in this Implementation Legislation concerns Congressional oversight of the organizations that make decisions on the canal. For too long, the economic impacts of changes in the status of the canal have taken second or third place to other elements of the national interest. The Bill proposed by the Administration would assure continuation of that practice by which agency bureaucrats alone make up the United States representation on the Panama Canal Commission. Congressman Murphy's bill which makes the Secretary of Defense, or his designee, the only United States official on the Commission would help to solve this problem. It is also absolutely necessary to provide, as H.R. 111 does, for Senate confirmation of Commission members. The provision for Senate confirmation will help to assure that adjustments in tolls take into consideration impacts on international commerce. We also believe that U.S. Commissioners should also include representatives of users of the canal, along the lines proposed by Mr. Haar on behalf of the Gulf and Atlantic ports.

The advocates of the Panama Canal Treaty advanced it on the grounds that our nation's foreign policy must be open and compassionate. But the most compassionate thing a government can do for its own people is assure each person the opportunity for a worthwhile and productive job. In the South Atlantic region we have made international commerce a major supplier of jobs. In the Implementation Legislation, Congress has the opportunity to keep faith with the citizens in our region, and elsewhere, whose jobs depend on the trade moving through the Panama Canal. To accomplish this, we need, at the very least, protection from unreasonable toll increases, Congressional oversight of Canal operations, and Senate confirmation of Commission members.

Mr. Prior. I am here today on behalf of the South Atlantic and Caribbean Ports Association. This association represents the major public and private terminals from North Carolina south, including the public ports authorities in North Carolina, South Carolina, Georgia, the Atlantic coast of Florida, and the Virgin Islands.

The ports in the South Atlantic range approach the Panama Canal Treaty implementation discussion from a unique perspective. Our ports serve an area which has for generations lagged behind the rest of the Nation in industrial development.

Per capita income, employment opportunities, and educational levels still stand considerably behind other regions.

Our region is made up of economically developing States striving to improve the opportunities available to their citizens.

The port developments by the public ports authority in our area have been part of the overall economic development strategy and improvement effort for our region. Those efforts have been very successful. For example, in South Carolina more than $6.3 billion has been invested in new or expanded industry since 1970. A substantial portion of this has been reverse investment by foreign-based firms dependent on our ports for their commerce.

And as a result, South Carolina, while it ranks very low in the Nation in terms of total capital invested in manufacturing holds seventh place nationally in reverse investment capital in manufacturing.

In recent years, the ports in the South Atlantic have tended to concentrate their investments in facilities to handle containerized cargoes. The reason for that, containerization tends to serve most effectively the high value commodities associated with manufacturing. Right now we have $58.5 million in construction projects going on at our port, almost all for containerization.

The impact of this activity is very high in our State. A recent study by the University of South Carolina showed it had a dollar value of $1.3 billion and has identified 42,000 jobs linked to port activities and port associated manufacturing.

It is important to note that these impacts come almost entirely from local public investment by States or municipalities. The Federal Government has put very little into it. Yet the Federal Government is one of the principal beneficiaries. It carries out of Charleston more than $120 million annually in customs receipts.

I will not go into some of the discussions already presented to you about the impacts of canal cargo increases, total increases on the movement through the canal. But I should say it is very widely accepted in the port industry that substantial diversions of traffic would occur, especially in containerized cargo. This would produce precipitous changes in the relationships between ports, lead to unemployment, underutilized facilities, and inability to pay off public indebtedness.

Moving the containerized cargoes out of the canal would have the effect of leaving the lower value cargoes, the ones that are least able to pay, to pay the higher tolls. In our area, for example, construction has recently begun on a $400 million aluminum processing plant which is designed and dependent on the canal for movement of 400,000 tons of alumina each year. It would have no alternative but to pay the high tolls. In our area, statistics show 500 of 1,400 ships calling on our facilities move through the canal. These ships carry close to 25 percent of the tonnage moving through Charleston facilities. Twelve hundred jobs are directly related here. Similar levels of involvement exist in other South Atlantic ports.

To keep faith with the Long understanding to the treaty, the implementation legislation must contain provisions like those in Congressman Murphy's bill requiring advance publication and public hearings on toll charges.

During the debate on the ratification of the treaty, advocates forecast that the treaty would not result in outrageous or crippling toll increases. They cited a maximum figure of 30 percent. The totals must be kept within that line.

The most important element, however, in the implementation legislation concerns congressional oversight of the organizations that make decisions on the canal. For too long, the economic impacts of changes in the status of the canal have taken second or third place to other elements of the national interest. The bill proposed by the administration would assure continuation of that practice by which agency bureaucrats alone make up the U.S. representation on the Panama Canal Commission.

It is absolutely necessary to provide, as H.R. 111 does, for Senate confirmation of Commission members. This provision will assure that the adjustments in tolls will take into consideration impacts on international commerce.

The advocates of the Panama Canal Treaty advanced it on the grounds that our Nation's foreign policy must be open and compassionate. But we must assure each person the opportunity for a worthwhile and productive job. In the South Atlantic region we have made international commerce a major supplier of jobs. In the implementation legislation, Congress has the opportunity to keep faith with the citizens in our region and all throughout the United States whose jobs depend on the trade moving through the Panama Canal. To accomplish this we need, at the very least, protection from unreasonable toll increases, congressional oversight of canal operations, and Senate confirmation of Commission members. And I hope the legislation you adopt will address these concerns.

Thank you for the opportunity.

Mr. HUBBARD. Thank you very much Gregory Prior, assistant executive, Port of Charleston.

Mr. HUBBARD. Mr. Lidinsky?

Mr. LIDINSKY. Yes, sir.

I want to thank Congresswoman Mikulski for her excellent introduction and Congressman Bauman for his continued interest and support. As the Congresswoman said, our organization represents the major public and private port authorities and terminal operators from Maine to Virginia to include the world ports of Boston, New York, Philadelphia, Baltimore, and Norfolk, and numerous other smaller ports.

With me today is Mr. G. Fred DiBono, Jr., president, Philadelphia Port Corporations, and William Hughes, Esq., associate city solicitor from Baltimore City, representing our mayor, William Donald Schaefer.

The Panama Canal Committee was formed by special resolution at the NAPA semiannual meeting in December 1978. The membership felt it imperative that Congress be aware of the potential impact of the implementing legislation on the North Atlantic port range. However, we want to stress at the outset that our concerns are not regional. It is in the general national interest for the canal to remain a viable mechanism for the movement of domestic and foreign commerce.

Since the treaties have been ratified, we recognize that the United States has certain legal and moral commitments to Panama, but we also feel vessel owner confidence in future use of the canal must be maintained. To that end we have joined with interested ports from Minnesota to Texas, in a Great Lakes-Atlantic-Gulf coalition and we are pleased to inform you that organizations such as the International Longshoremen's Association, AFL–CIO, and the Great Lakes Terminals Association fully support our position, while others such as the Council of North Atlantic Shipping Associations—CONASA—and the Japanese Shipowners Association endorse our general goals.

We have analyzed the two major pieces of Panama Canal implementing legislation—H R. 1716, which was introduced on behalf of the administration, and H.R. 111, sponsored by Congressman John M. Murphy of New York and other members of the Merchant Marine and Fisheries Committee. Particular attention was given to chapters 1 and 2, title II of H.R. 1716 and Chapters 1 and 10, title I of H.R. 111.

Our analysis leads us to support H.R. 111, because that bill better fulfills our treaty commitments and yet provides for continued user confidence in the canal. We do believe, however, that certain amendments in Commission selection procedures, tolls, and congressional oversight areas are necessary: Furthermore, we oppose section 412(b), which will require the recovery of interest and amortization of past capital improvements.

My testimony will focus on proposed amendments to H.R. 111 and H.R. 1716, and simultaneously respond to questions 3, 4, and 5 posed by the committee. These questions request comment regarding:

Our suggestions as to the type of tolls structure that will be appropriate under the regime to be established in the Canal Treaty implementing legislation;

Our views as to the merits of the provisions in H.R. 111 and H.R. 1716 relating to procedures for tolls adjustments and changes in measurement rules; and

How should the concerns of the ports and the maritime interests of the United States be reflected in the decisionmaking structure for canal matters?

Attached to this testimony is a compendium of materials which is relevant to our interest in this area. I would request it be made part of the record.

[The following material was submitted for the record:]

APPENDIX A

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573

May 8, 1978

TAR-F:34-IRCM

MARYLAND PORT ADMINISTRATION
TRANSPORTATION [illegible]

MAY 09 1978

DIRECTOR'S OFFICE

Richard A. Lidinsky, Jr., Assistant
Director of Transportation
Maryland Department of Transportation
The World Trade Center Baltimore
Baltimore, Maryland 21202

Dear Mr. Lidinsky:

This is in response to your letter of March 29, 1978, pertaining to your preparation of an analysis and possible amendments relative to the implementing legislation for the Panama Canal Treaties.

In order to assist you in establishing an average figure covering rate increases for canal tolls we have compiled the following statistics. The currency surcharge average adjustment increases for the period 1977 to current 1978 was 4.2 percent. The average percent of bunker surcharge amounts established during the period January 1, 1977, to the present time is approximately three percent. The average general rate increases covering all conferences and rate agreements amount to 13.6 percent.

The Commission in the past has expressed its views relative to increased canal tolls by stating that if it is determined that valid operating expense factors justify the charges, it would not interpose any objection to an increase.

Further, the Commission is very cognizant of the fact that technological changes have developed in international transport services which competes landbridge with the all-sea services via the Panama Canal. Various shipping lines, as you are aware, have filed joint tariffs with the Commission which contain through intermodal rates that utilize rail and truck service over the United States. Any increased expenses, which are applied via the all-water route through the Canal, might cause a diversion of cargo to the mini-bridge/landbridge service. This, of course, could effect the overall cargo that would move through the Port of Baltimore. The Commission is maintaining a continual surveillance over this problem as it effects all United States ports that handle Panama Canal cargo.

It is hoped that the above information and comments will be beneficial to you. If we can be of any further assistance, please let us know.

Sincerely yours,

E. F. Hawkins

Edward F. Hawkins, Chief
Office of Tariffs & Intermodalism
Bureau of Compliance

IMPORT FAR EAST MINI BRIDGE AND ALL WATER GENERAL CARGO TONNAGE

(IN SHORT TONS)

EASTBOUND CARGO IN BOND IN SHORT TONS

CUSTOMS DISTRICT	NEW YORK	PHILADELPHIA	BALTIMORE	HAMPTON ROADS	4 PORT TOTAL
1977	281,238	57,479	74,424	50,198	463,339
1976	175,046	42,404	46,877	34,181	298,508
1975	100,523	22,775	21,521	18,828	163,647
PERCENTAGE CHANGE					
1977/1976	+60.7	+35.6	+58.8	+46.9	+55.2
PERCENTAGE CHANGE					
1977/1975	+179.8	+152.4	+245.8	+166.6	+183.1

ALL WATER IMPORT GENERAL CARGO *

CUSTOMS DISTRICT	NEW YORK	PHILADELPHIA	BALTIMORE	HAMPTON ROADS	4 PORT TOTAL
1977	1,244,605	184,596	275,717	53,694	1,758,612
1976	1,308,103	162,365	270,432	66,567	1,807,487
1975	918,273	150,994	213,254	67,722	1,350,243

PERCENT OF EASTBOUND CARGO TO TOTAL GENERAL CARGO

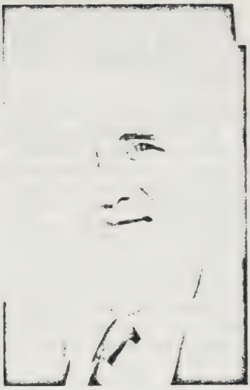
1977	22.6	31.1	27.0	93.5	26.3
1976	13.4	26.1	17.3	51.3	16.5
1975	10.9	15.1	10.1	27.8	12.1

* TOTAL CARGO LESS BULK COMMODITIES, WOOD PRODUCTS, IRON AND STEEL PRODUCTS, AND TRANSPORTATION EQUIPMENT FROM JAPAN

- Prepared by Delaware River Port Authority, 1978

Liner cargo changing patterns

JOHN R. IMMER



John R. Immer is president of Work Saving International, management consultants of Washington, D.C. and chairman of the board of Caribe Trailer Systems, Inc. He is the author of "Container Services of the Atlantic" and other books on cargo handling and industrial management.

Fundamental changes now taking place in the distribution pattern of waterborne liner cargo will have a major effect on the future development of each United States port. Liner cargo, as opposed to tramp, irregular or tanker services, places a much greater demand upon all port services and, by the same token, contributes more to the prosperity of the port.

Liner exports consist predominantly of manufactured or processed products and materials. The largest single source for these products in the Western Hemisphere is the great "Heartland" of the North American continent — an area consisting of the North Central states of the U.S. and the province of Ontario in Canada. This is the area whose entry ports have been changing and will continue to change.

The entire trade to and from this area is subject to diversion and rapid changes of distribution pattern. The area is highly reactive to new methods, improved service, lower costs and more efficient methods of transport and distribution. Imports for processing and fabrication to be used in manufacturing will have the same distribution pattern as the exports. Imports for consumption will be distributed more on the basis of regional income levels. Imports for the Heartland will be drawn to the same services and facilities developed to attract the exports.

Summary of changes

From 1970 to 1977, the ports of the North Atlantic, Gulf and the Great Lakes lost 6.8 million long tons of liner cargo. During the same period the Pacific ports gained nearly 4 million long tons. The ports of the South Atlantic gained 623,000 long tons. Stated percentagewise, the loss of the North Atlantic, Gulf and Great Lakes ports amounted to 21.5 percent of their total 1970 liner cargo while the Pacific ports increased their liner cargo traffic by nearly 54 percent. The trade from South Atlantic ports increased nearly 16 percent. This constitutes a drastic change in the pattern of distribution for liner cargo and indicates that strong forces are at work.

There are several forces at work to cause these changes. The first of these involves basic demographic changes. A major shift in population has been taking place for some time. More factories are opening and expanding in the South Central and Pacific areas than in the Middle West and North East regions. If this were the sole determinant, however, the Gulf and South Atlantic ports should have had the greatest increase during this period. This did not happen because of another factor. The Gulf ports delayed too long in setting up the port structures required for containerization and it will take some doing to catch up.

Perhaps the most important single force in causing these changes has been the impact of the railroads. Piggyback is most efficient at greater distances, thus its growth minimizes the negative aspect of distance and makes the far-distant port more competitive with the nearer port. Shorter distances tend to be served more by truck than by rail, hence increasing labor costs causing immediate truck rate increases which favor the distant port over the nearer port in the long run. A part of this picture is the aggressiveness of the Western and Canadian railroads and the shambles of the railroads connecting the Middle West with the North Atlantic and Gulf ports. There is a correlation between the success of the Southern and Family Railways and the growth of traffic through the South Atlantic ports.

Changes in the Great Lakes traffic have been due to the fact that shipping companies have begun to realize that it takes longer to go from Montreal to Chicago than it does from Halifax to Liverpool. This reduces the round trips per year and the total tonnage a ship can transport per year. Work Saving International showed in 1962 that liner cargo could be carried more cheaply by rail from Chicago to Halifax than it could be carried by water. This study resulted in the development of Halifax as a container port and the formation of the Dart Containerline.

The character of the total services of a port has facilitated or stimulated changes in the traffic patterns. In the past, traffic patterns have tended to remain rigid. Strikes and arbitrary labor conditions encourage companies to try new routes, new ports and new shipping services. Once tried, sometimes they like the new route better and a permanent traffic change has occurred. Such conditions have hurt Boston and New York particularly and do not seem likely to change. Improvement in container handling and processing through the port is more likely to occur in Southern and Western ports which will cause the trend toward those ports to continue.

Changes in exports

The regional changes in the volume of exports of liner cargo from 1970 to 1977 are summarized in Table I. This table is based upon the specific tonnage figures for each major port as shown in Table III. Total liner exports declined for the period from 28,875,000 long tons to 25,199,000 long tons, a decrease of 3,676,000

; tons or 12.7 percent. The North intic, Gulf and Great Lakes regions lost 4.8 million long tons and the Pacific ports increased their output by 2.0 million tons.

North Atlantic. Between 1970 and 1977 the North Atlantic ports lost nearly 20 percent of their total export liner cargo. This was a loss of 1.6 million long tons. The greatest loser was New York City which found its share of the total export pie reduced from 14.4 percent to 13.2 percent. With the exception of Newport News the other ports retained or slightly increased their share of the traffic. Most of New York City's loss was probably to the western or to the Canadian ports with a small amount southward.

South Atlantic. The South Atlantic ports increased their share by 22 percent. Total liner exports increased from 2,118,000 long tons to 2,586,000 long tons, an increase of 468,000 long tons. This increase could have been due almost entirely to the growth of industries in the South Central and South Atlantic states with a small amount diverted from the more northern ports.

Gulf Ports. The Gulf ports suffered the greatest loss of any region. Their liner exports in 1970 of 8,653,000 long tons dropped to 5,915,000 long tons in 1977, a loss of 2,741,000 long tons or 31.6 percent. By far the greatest part of this loss is believed to have resulted from the diversion of manufactured cargo from the Heartland to the West Coast. The loss was also caused by the failure of the Gulf ports to provide adequate cranes and equipment for the increased use of van size containers. Also, a lack of promotional effort, on the level of the West Coast and Canadian ports and railroads, contributed to the scale of the loss.

South Pacific. The South Pacific ports had the greatest increase in liner exports. Their liner exports increased from 2,844,000 long tons in 1970 to 4,282,000 long tons in 1977, an increase of 1,438,000 long tons or 50 percent. Although there was some increase in local manufactures during this period, the greatest part of the increased trade is believed to have come from the North Central states.

North Pacific. The North Pacific ports had the same percentage of increase in liner exports from 1970 to 1977 as the

TABLE I

REGIONAL CHANGES IN VOLUME OF LINER EXPORTS
1970-1977

Region	Change in 1,000 Long Tons	% Change in Volume	Change in % of Total
North Atlantic	− 1,645	− 19.3	− 2.3
South Atlantic	+ 468	+ 22.1	+ 3.0
Gulf Ports	− 2,738	− 31.6	− 6.5
South Pacific	+ 1,438	+ 50.1	+ 7.2
North Pacific	+ 492	+ 49.6	+ 2.5
Great Lakes	− 470	− 63.9	− 1.5

Source: Table III.

TABLE III

U.S. WATERBORNE EXPORTS — LINER CARGO
Bureau of the Census, SA 705
(1,000 Long Tons)

Region Port	1970	Percent of Total	1974	Percent of Total	1977	Percent of Total
NORTH ATLANTIC						
Boston	110	.4	149	.5	118	.5
New York City	4,168	14.4	4,860	17.3	3,319	13.2
Philadelphia	670	2.3	879	3.1	539	2.1
Baltimore	1,639	5.7	1,828	6.5	1,529	6.1
Norfolk	1,278	4.4	1,249	4.4	1,060	4.2
Newport News	472	1.6	211	.8	127	.5
TOTAL *	8,337	28.9%	9,176	32.6%	6,692	26.6%
SOUTH ATLANTIC						
Wilmington, N.C.	85	.3	110	.4	165	.7
Moorehead City, N.C.	167	.6	78	.3	83	.3
Charleston	402	1.4	709	2.5	807	3.2
Savannah	932	3.2	997	3.5	903	3.6
Jacksonville	238	.8	162	.6	234	.9
Miami	210	.7	338	1.2	296	1.2
San Juan	84	.3	174	.6	98	.4
TOTAL	2,118	7.3%	2,568	9.1%	2,586	10.3%
GULF PORTS						
Tampa	1,007	3.5	285	1.0	289	1.1
Mobile	654	2.3	525	1.9	313	1.2
New Orleans	3,632	12.6	3,477	12.4	2,681	10.6
Port Arthur	163	.1	182	.6	136	.5
Beaumont	380	1.3	189	.7	36	.1
Houston	2,088	7.2	1,859	6.6	1,990	7.9
Galveston	729	2.5	593	2.1	470	1.9
TOTAL	8,653	30.0%	7,110	25.3%	5,915	23.5%
SOUTH PACIFIC						
San Diego	138	.5	157	.6	10	—
Los Angeles	996	3.4	1,187	4.2	1,294	5.1
Long Beach	405	1.4	974	3.5	1,055	4.2
San Francisco	593	2.1	795	2.8	362	1.4
Oakland	621	2.2	953	3.4	1,549	6.1
Alameda	91	.3	41	.1	12	—
TOTAL	2,844	9.8%	4,107	14.6%	4,282	17.0%
NORTH PACIFIC						
Portland	556	1.9	516	1.8	526	2.1
Seattle	435	1.5	709	2.5	957	3.8
TOTAL	991	3.4%	1,225	4.3%	1,483	5.9%
GREAT LAKES						
Milwaukee	198	.7	94	.3	129	.5
Detroit	111	.4	33	.1	32	.1
Chicago	427	1.5	130	.5	105	.4
TOTAL	736	2.5%	257	.9%	266	1.0%
TOTAL ABOVE PORTS	23,679		24,443		21,224	
TOTAL U.S.A. PORTS	29,875		28,113		25,199	
Listed Ports % of U.S.	82.0%		80.5%		84.2%	

TABLE II

REGIONAL CHANGES IN VOLUME OF LINER IMPORTS
1970-1977

Region	Change in 1,000 Long Tons	% Change in Volume	Change in % of Total
North Atlantic	− 1,011	− 10.3	− 5.2
South Atlantic	+ 155	+ 8.6	+ .6
Gulf Ports	− 123	− 4.1	− .7
South Pacific	+ 1,495	+ 52.5	+ 6.9
North Pacific	+ 539	+ 79.6	+ 2.7
Great Lakes	− 732	− 70.1	− 3.5

Source: Table IV.

TABLE IV

U.S. WATERBORNE IMPORTS — LINER CARGO
Bureau of the Census, SA 305
(1,000 Long Tons)

Region Port	1970	Percent of Total	1974	Percent of Total	1977	Percent of Total
NORTH ATLANTIC						
Boston	505	2.4	340	1.5	270	1.3
New York City	6,350	30.2	6,392	28.5	5,740	27.0
Philadelphia	1,203	5.7	932	4.2	600	2.8
Baltimore	1,180	5.6	1,786	8.0	1,253	5.9
Norfolk	536	2.5	802	3.6	892	4.2
Newport News	44	.2	44	.2	53	.2
TOTAL	9,818	46.6%	10,296	45.9%	8,808	41.4%
SOUTH ATLANTIC						
Wilmington, N.C.	236	1.1	208	.9	240	1.1
Moorehead City, N.C.	17	.1	218	1.0	2	—
Charleston	346	1.6	422	1.9	463	2.2
Savannah	370	1.8	586	2.6	564	2.6
Jacksonville	252	1.2	272	1.2	206	1.0
Miami	169	.8	280	1.2	254	1.2
San Juan	413	2.0	307	1.4	229	1.1
TOTAL	1,803	8.6%	2,293	10.2%	1,958	9.2%
GULF PORTS						
Tampa	195	.9	177	.8	62	.3
Mobile	288	1.4	453	2.0	167	.8
New Orleans	1,461	6.9	1,656	7.4	1,495	1.0
Port Arthur	5	—	1	—	19	.1
Beaumont	13	.1	1	—	16	.1
Houston	974	4.6	1,670	7.4	1,017	4.8
Galveston	101	.5	177	.8	138	.6
TOTAL	3,037	14.4%	4,135	18.4%	2,914	13.7%
SOUTH PACIFIC						
San Diego	51	.2	25	.1	6	—
Los Angeles	1,243	5.9	1,371	6.1	1,730	8.1
Long Beach	566	2.7	923	4.1	1,364	6.4
San Francisco	580	2.8	400	1.8	348	1.6
Oakland	295	1.4	555	2.5	853	4.0
Alameda	112	.5	115	.5	41	.2
TOTAL	2,847	13.5%	3,389	15.1%	4,342	20.4%
NORTH PACIFIC						
Portland	218	1.0	243	1.1	153	.7
Seattle	459	2.0	625	2.8	1,063	5.0
TOTAL	677	3.0%	868	3.9%	1,216	5.7%
GREAT LAKES						
Milwaukee	116	.6	32	1	37	.2
Detroit	459	2.2	97	.4	102	.5
Chicago	469	2.2	131	.6	173	8
TOTAL	1,044	5.0%	260	1.2%	312	1.5%
TOTAL ABOVE PORTS	19,226		21,241		19,550	
TOTAL U.S.A. PORTS	21,061		22,445		21,294	
Listed Ports % of U.S.	92.4%		94.6%		91.8%	

South Pacific ports. Their 1970 liner exports increased from 991,000 to 1,483,000 long tons in 1977, an increase of 492,000 long tons or 50 percent. Practically all of this increase is believed to have come from the North Central states, traffic which formerly went south or east or through Great Lakes ports.

Changes in imports

The regional changes in the volume of imports of liner cargo from 1970 to 1977 are summarized in Table II. This table is based upon the tonnage from the various major ports shown in Table IV. Total liner imports remained about the same during this period. However, there was a considerable change in the share of the various regions. This change, for the most part, followed the pattern for exports.

North Atlantic. Between 1970 and 1977 the North Atlantic ports lost 10 percent of their import liner cargo. Imports declined from 9,818,000 long tons to 8,808,000 long tons, a loss of 1,010,000 long tons. New York City declined by 10 percent but Philadelphia dropped to one half of its 1970 rate. Baltimore and Norfolk managed to increase their import liner cargo slightly.

South Atlantic. During this period, the South Atlantic ports increased their liner imports by 8.6 percent, increasing from 1,803,000 long tons in 1970 to 1,958,000 long tons in 1977. Charleston, Savannah and Miami increased their imports while Jacksonville and San Juan fell behind. This increase for the region was in line with the growth of income for the region for the period.

Gulf Ports. The Gulf ports had only a small loss in imports, about 4 percent, compared to its loss of exports for the period of 31.6 percent. Perhaps this was due to the fact that in 1970, imports were only 35 percent of the level of its exports so there was less to lose. This may also be due to the possibility that imports for the North Central area historically came through North Atlantic or Great Lakes ports. Hence the diversion of traffic would have been more to Canadian and Pacific ports.

South Pacific. Liner imports through South Pacific ports increased nearly 1.5 million long tons, from 2,847,000 long tons to 4,342,000 long tons for an increase of 52.5 percent. As total

continued on 49

SEA-LEVEL CANAL STUDIES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE PANAMA CANAL

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 10087

A BILL TO PROVIDE FOR AN UPDATING OF THE REPORT OF THE ATLANTIC-PACIFIC INTEROCEANIC CANAL STUDY COMMISSION

H.R. 13176

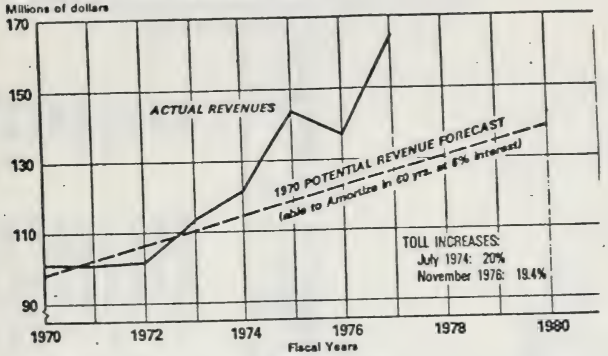
A BILL TO PROVIDE FOR AN UPDATING OF THE REPORT OF THE ATLANTIC-PACIFIC INTEROCEANIC CANAL STUDY COMMISSION AND FOR THE ESTABLISHMENT OF A JOINT UNITED STATES-PANAMA SEA-LEVEL CANAL STUDY COMMISSION, AND FOR OTHER PURPOSES

JUNE 21, 27, 28, 1978

Serial No. 95–51

Printed for the use of the Committee on Merchant Marine and Fisheries

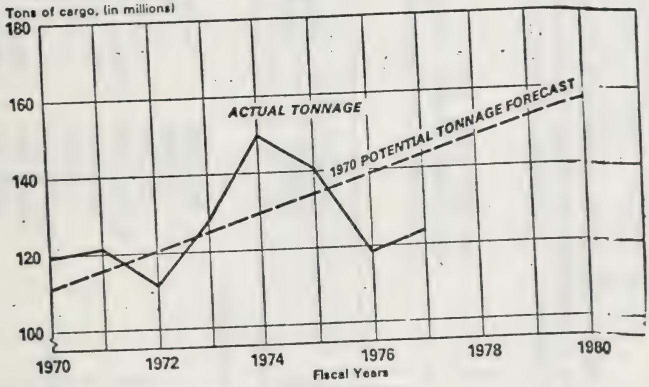
Panama Canal Revenues



Source: Interoceanic Canal Studies - 1970 and Panama Canal Co.

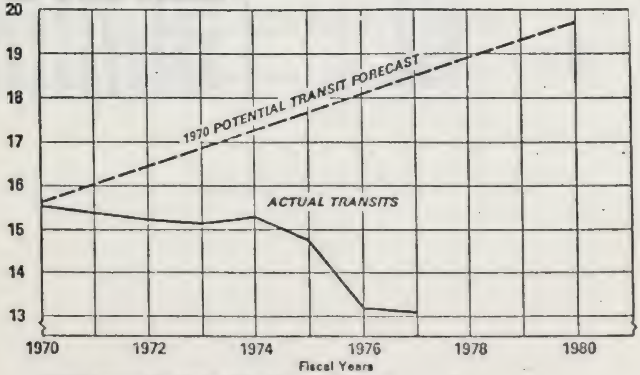
Panama Canal Tonnage

SOURCE: INTEROCEANIC CANAL STUDIES -1970 and the PANAMA CANAL COMPANY.



SOURCE: Interoceanic Canal Studies - 1970 and Panama Canal Company.

Panama Canal Transits



SOURCE: Interoceanic Canal Studies - 1970 and Panama Canal Company.

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL FOR ATLANTIC PORTS GROUPED BY STATES

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS IN 1976 LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRALIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS

	LONG TONS	DIRECT IMPACT $	TOTAL IMPACT $	EMPLOYMENT IMPACT
STATE OF LOAD/DISCHARGE				
CONNECTICUT	201,972	8,886,768	14,218,849	336
DELAWARE	69,955	3,078,020	4,924,893	116
MAINE	27,261	1,199,484	1,919,214	45
MARYLAND	5,456,253	240,075,132	384,120,243	9,093
MASSACHUSETTS	816,356	35,919,664	57,471,481	1,360
NEW HAMPSHIRE	90,250	3,971,000	6,353,630	150
NEW YORK/NEW JERSEY	4,670,044	205,481,936	328,771,142	7,783
PENNSYLVANIA	2,422,389	106,585,116	170,536,248	4,037
RHODE ISLAND	143,810	6,327,640	10,124,250	239
VIRGINIA	10,881,916	478,804,304	766,086,914	18,136

-Source: Port of New Orleans Import Study,1978

FOREIGN AND DOMESTIC* TRADE OF ALL VIRGINIA PORTS UTILIZING THE PANAMA CANAL (SHORT TONS) CALENDAR YEAR 1977

Foreign Country**	Exports		Imports
Afghanistan	297		2,453
India	85,164		15,356
Pakistan	2,625		357
Nepal	129		331
Bangladesh	14,816		2,081
Sri Lanka	178		5,966
Burma	1		---
Thailand	12,720		36,962
Laos	---		16
Malaysia	7,963		91,656
Singapore	5,400		17,923
Indonesia	63,658		170,021
Brunei	8		---
Philippines	39,452		28,295
Macao	---		25
China	529		2,428
Republic of Korea	648,900		134,277
Hong Kong	3,662		2,070
Taiwan	102,305		22,628
Japan	7,410,575		148,877
Australia	77,470		25,663
New Zealand	12,398		35,957
French Pacific Islands	4		---
Equador	2,616		206
Peru	274		9,303
Chile	220,222		90,427
Bolivia	921		48
Colombia	1,936		144,508
Total Foreign Trade	8,714,223		987,834
Grand Total All Virginia Ports	Total:	9,702,057	
Foreign Trade - 1977	32,073,406		12,537,641
	Total:	44,611,047	

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*Domestic Trade - 60,000 short tons estimated for 1977 (California).

**Source - U.S. Department of Commerce, Bureau of the Census.

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ECONOMIC IMPACT OF TONNAGE FOR VIRGINIA PORT FACILITIES WHICH PASSED THROUGH THE PANAMA CANAL DURING CALENDAR YEAR 1977

Type of Tonnage	Economic Impact ($ Value)
General Cargo	54,009,818
Bulk	75,762,682
Total	129,772,500

Note 1: The current economic impact for tonnage handled by Virginia port facilities is $44.96 per ton of general cargo and $8.85 for each ton of bulk cargo handled. This includes all business components which participate in cargo handling.

Note 2: Excluded from the tonnage report and economic impact value from handling is 25 percent of coal exports to Japan which is estimated to move in large volume vessels which go around Cape Horn.

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FOREIGN AND DOMESTIC TRADE OF THE PORT OF BALTIMORE UTILIZING THE PANAMA CANAL (SHORT TONS) CALENDAR YEAR 1977

FOREIGN COUNTRY*	EXPORTS	IMPORTS
Afghanistan	77	319
India	7,234	18,067
Pakistan	23,728	327
Nepal	5	181
Bangladesh	29,873	2,484
Sri Lanka	461	4,919
Burma	36	-
Thailand	30,365	12,736
South Vietnam	28	-
Laos	1	-
Malaysia	7,124	30,383
Singapore	16,440	2,836
Indonesia	23,593	37,055
Brunei	1,103	-
Philippines	23,911	137,389
Macao	31	138
Southern Asia	3	-
China	805	2,919
Republic of Korea	282,266	28,736
Hong Kong	26,168	12,510
Taiwan	238,272	84,909
Japan	3,737,859	428,014
Australia	17,512	413,008
New Zealand	2,917	5
French Pacific Islands	196	46,429
Equador	10,996	41,888
Peru	19,852	86,304
Chile	16,993	126,255
Bolivia	6,373	5,727
Colombia (Port of Buenaventura)	3,158	21,067
TOTAL FOREIGN TRADE	4,527,380	1,544,605
GRAND TOTAL POB	Total: 6,071,985	
FOREIGN TRADE - 1977	14,039,561	16,368,524
	Total: 30,408,085	

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*Source - U. S. Department of Commerce, Bureau of the Census.

APPENDIX A (Cont'd.)

DOMESTIC INTERCOASTAL/ OFFSHORE**

	SHIPMENTS	RECEIPTS
California	-	-
Hawaii	19,116	25,333
Guam	1,090	-
Washington	-	78,588
Oregon	-	8,425
	20,206	112,346
GRAND TOTAL POB	Total: 132,552	
DOMESTIC TRADE - 1977	972,978	5,792,286
	Total: 6,765,264	

** Sources - U. S. Department of Commerce, The Maritime Administration.

FOREIGN AND DOMESTIC TRADE OF THE PORTS OF PHILADELPHIA
UTILIZING THE PANAMA CANAL
CALENDAR YEAR 1977

FOREIGN COUNTRY	EXPORTS	IMPORTS
Afghanistan	241	10,754
India	8,711	14,698
Pakistan	18,308	194
Nepal	-0-	64
Bangladesh	2,301	6,805
Ceylon	61	5,064
Burma	5	-0-
Thailand	10,512	20,635
Laos	-0-	-0-
Malaysia	1,774	14,850
Singapore	2,224	1,311
Indonesia	12,050	2,221,948
Philippines	37,667	212,774
Macal	-0-	12
China	1,942	1,845
Outer Mongolia	-0-	18
Korea Republic	154,334	248,394
Hong Kong	8,351	11,667
Taiwan	38,879	132,485
Japan	234,821	884,843
Australia	53,800	277,158
New Guinea	337	1,936
New Zealand	11,134	55,259
Western Samoa	-0-	347
Other Pacific Islands	5	1
Ecuador	7,910	55,638
Peru	67,124	436,887
Chile	13,552	48,597
Bolivia	4,022	1,270
Total Foreign Trade	690,065	4,665,454
Total Export & Import	5,355,519	
Grand Total Foreign Trade 1977	4,206,178	72,567,468
	76,773,646	

FOREIGN TRADE OF THE PORT OF NEW YORK UTILIZING THE PANAMA CANAL (SHORT TONS)

1977

FOREIGN COUNTRY	EXPORTS	IMPORTS
Afghanistan	6,272	963
India	58,560	106,741
Pakistan	46,097	5,590
Nepal	462	1,064
Bangladesh	7,326	7,065
Sri Lanka	600	11,852
Burma	977	9
Thailand	26,406	74,348
South Vietnam	4	6
Laos	17	58
Malaysia	9,199	106,453
Singapore	20,526	19,244
Indonesia	16,887	223,483
Brunei	610	--
Philippines	40,592	357,352
Macao	3	1,507
Southern Asia, N.E.C.	10	--
China	1,857	33,184
Republic of Korea	258,592	132,684
Hong Kong	46,900	129,143
Taiwan	95,803	266,776
Japan	403,010	746,371
Australia	96,955	334,891
New Zealand	18,465	61,049
French Pacific Islands	458	2
Equador	39,412	239,422
Peru	26,299	158,461
Chile	45,415	48,534
Bolivia	11,988	7,709
Columbia (Port of Buenaventura)	57,241	473,673
TOTAL FOREIGN TRADE	1,332,003	3,548,174
GRAND TOTAL	Total: 4,880,177	
FOREIGN TRADE - 1977	5,730,058	58,608,179
	Total: 68,338,237	

MASSACHUSETTS PORT AUTHORITY
MARITIME DIVISION

Import Minibridge and All Water General Cargo Traffic Between the Far East Trade Area and U.S. North Atlantic Ports
Calendar Year 1977
(in short tons)

Boston	New York	Philadelphia	Baltimore	Hampton Roads	Five Port Total
Minibridge Traffic					
114,273	281,238	57,479	74,424	50,198	577,612
All Water Traffic					
75,371	1,244,605	184,596	275,717	53,694	1,833,983

Source: American Association of Port Authorities
AAPA Advisory November 6, 1978

Issued by: Maritime Division
RM - 1/29/79

MASSACHUSETTS PORT AUTHORITY
MARITIME DIVISION

Foreign Oceanborne Trade of the Port of Boston
Moving Via the Panama Canal and
Its Impact upon the U.S. Economy
Calendar Year 1977
(in Short Tons)

	Exports	Imports	Total Tonnage	Dollar Value	Direct Impact	Total Impact	Employment Impact
Canada-Pacific	---	41,104	41,104	7,307,932	$1,614,800	$2,583,680	61
India	---	742	742	1,093,190	29,172	46,675	1
Pakistan	12,145	1	12,146	764,829	477,180	763,488	18
Bangladesh	5,450	---	5,450	300,458	214,104	342,566	8
Thailand	16	3,254	3,270	1,511,315	128,480	205,568	5
Malaysia	6	1,316	1,322	1,239,958	51,920	83,072	2
Singapore	52	340	392	720,395	15,400	24,640	1
Indonesia	1	18	19	9,414	748	1,197	0
Philippines	536	249,354	249,890	54,449,606	9,817,104	15,707,366	372
Macao	---	6	6	27,356	220	352	0
China	---	742	742	1,921,941	29,172	46,675	1
Republic of Korea	104,872	12,032	116,904	14,352,068	4,592,676	7,348,282	174
Hong Kong	1,610	2,911	4,521	8,624,011	117,628	188,205	7
Taiwan	1,612	9,195	10,807	14,905,042	424,556	679,290	16
Japan	34,015	80,545	114,560	168,664,817	4,500,584	7,200,934	170
Australia	8,516	32,462	40,978	36,430,336	1,609,872	2,575,795	61
New Zealand	1,455	13,531	14,986	32,924,057	588,720	941,952	22
New Guinea	1	---	1	1,459	40	64	0
French Pacific Islands	---	9	9	21,856	352	563	0
TOTAL	170,287	447,562	617,849	$345,270,040	$24,212,728	$38,740,364	919

NOTE: Foreign trade data was obtained from the Department of Commerce, Bureau of the Census. The figures expressing the economic impact per Long ton (2240 lbs.) were derived from a formula utilized by the Port Authority of New York and New Jersey in a recent study completed on behalf of the U.S. Maritime Administration entitled Economic Impact of the U.S. Port Industry. Formula:

Direct Impact = $44.00 per Long Ton
Total Impact = 1.6 times Direct Impact
Employment = 1 job per 600 Long Tons

Issued by: Maritime Division
RM: - 1/29/79

Mr. Lidinsky. The North Atlantic and Far East trade accounts for one-third of canal traffic and revenue The economic impact of the canal on major North Atlantic ports is over $1 billion and nearly 40,000 jobs.

Since the early 1970's this trade has been eroded by alternate land modes of service to shippers and consumers who previously exclusively used our ports. This is our primary concern and Chairman Murphy articulated this concern when during the hearings last year on the sea-level canal study he stated that cargoes normally flowing to the east and gulf coasts are, and will continue to be, very susceptible to the sensitivity of tolls due to the alternatives such as landbridge. Therefore, one can imagine our reaction when the Department of Commerce witness testified this past February 15 that they expect a toll increase of 44.4 percent.

A recent article in the Harvard Law Review by William G. Hamlin, Jr., addresses our concern over the possibility of massive toll increases which could ultimately, in Mr. Hamlin's words: "* * * be to the detriment of United States consumers." As the author notes: "the Treaties deal with tolls in a relatively cursory fashion." This is of course odd, or perhaps revealing, since tolls and their revenues must provide the basis of healthy fiscal canal operation for the next 21 years.

Yet, this also seems to mirror the attitude of the administration on this issue. Last year during the ratification debate, east coast ports and others were assured by the State Department that any toll increases would not be harmful; moreover, they would have a negligible impact on overall shipping costs. Yet no supporting study or analysis was supplied to substantiate these claims. This nonchalant attitude on the part of the State Department has been further reflected in recent congressional correspondence in which suggestions for rate guidelines are dismissed as unnecessary. It was to be expected that in administration testimony supporting H.R. 1716, that toll stability and port concerns would be glossed over. In 50 pages of State Department testimony, only two passing references are made to canal toll problems. Obviously, the State Department does not consider these matters important. Yet this position is inconsistent with the inflationary guidelines so vigorously applied by the administration in other areas. [See unanswered letter to Alfred Kahn from NAPA Panama Canal Committee, Jan. 29, 1979, appendix B.]

Clearly, since H.R. 1716 addresses none of our primary concerns, we cannot support it. In light of the above, we turn to the Congress, particularly the House of Representatives, which was denied a role in the Canal Treaty ratification process last year. Prior to this time there was general recognition that both Houses of the Congress have an inherent and ongoing role in all phases of canal operation, as per the *Panama Canal Co.* v. *Canal Line, Inc.*, 356 U.S. 309, 319 (1958). Adhering to that belief, the ports now seek your assistance, guidance, and direction in solving our problems with this legislation.

Although our specific amendments to the administration and Murphy bills are attached—appendix C—of my statement they can be summarized as follows:

(a) After allowing a substantial initial toll increase of no larger than 27 percent, an 11 percent per annum inflation ceiling on rate increases would then take effect, and could only be dispensed with by necessity to conform with the per annum Panamanian payments provisions in article XIII (4)(b) of the treaty.

These amendments to sections 412 and 414 of H.R. 111 and sections 231 and 232 of H.R. 1716, are our most important amendments. We are aware that many economists are fearful of rate ceilings or stated percentage limitations, feeling that the regulated entity will automatically seek the specified limit CONASA feels a 5-percent per annum limitation is needed. We do not share that fear for we assume that the new Commission will act in a fiscally responsible manner and that this amendment will be not only be a guideline to them, and an assurance to users that tolls will remain as stable as possible, going for long periods without any increase. We fully recognize and accept the fact that canal users and not the American taxpayer should bear the burden of canal operation. Our toll ceiling amendment will not deter that obligation. As an example of how the ceiling would work, let us assume the Commission would seek an increase of less than 11 percent. This increase request would not be automatic. Procedures for justification which I will outline in the oversight amendment would have to be followed to meet treaty obligations. The same procedures would have to be followed for an increase greater than 11 percent, but such an increase could only be sought to meet the treaty requirement of article XIII(4)(b)—the fixed annuity of $10 million. The toll ceiling limitation could be adjusted by Congress upward in the future if it were being continually surpassed to meet the obligations of treaty article XIII(4)(b), or reduced in the case that future toll increases proved minimal.

(b) Insure that the House of Representatives retain a role in canal oversight through the year 2000. These amendments to section 413 of H.R. 111 and sections 230 of H.R. 1716 achieve that goal in two steps; the first step is to insure that the toll increase mechanisms in H.R. 1716 are amended to be generally similar to the procedures in section 413 of H.R. 111; we then propose the second step of insuring that once such toll increase procedures are initiated, the need for the increase be analyzed and justified in light of the specific language of the "Long Understanding" to the treaty, the only port protective language in the documents. Any toll increase request would be reviewed by the appropriate committees of the House and Senate. This review will allow the Congress a specific oversight role in the fiscal operations/toll increase area for the next two decades.

(c) Make recommendations regarding the composition of the new Panama Canal Commission by continuing the tradition of private sector representation, with the exception of the Secretary of Defense, serving on the Commission. Amendments to section 102 of H.R. 111 and section 205 of H.R. 1716 provide that private sector representation from the most dependent areas of our country on the canal—the Atlantic and Gulf States—as well as qualified persons from the American Merchant Marine and import/export fields, will have a chance to serve on the Commission. The administration bill is totally unacceptable in looking to high Federal offi-

cials for Commission service and not providing Senate confirmation for these appointees. H.R. 111 does provide for the potential of private sector representation, confirmation of these appointees, yet has the necessary presence and direction of the Secretary of Defense on the Commission. We also feel that stated successive 4-year terms would allow the development of expertise by Commission members. but would not tie a President's hands in making changes. We offer such a provision and agree with H.R. 111 that the Commission be a governmental entity, as well as the arrangement in section 105 of H.R. 111 for the consultative committee. The attached chart will simply illustrate the present differences in the Murphy and administration bills, with our amendments in the last column.

[The material was included in the statement of Mr. Haar.]

In conclusion, we feel that our amendments are consistent with the spirit and language of the treaty and are fair and reasonable. They can form the basis of amendments which would not only improve the final bill you approve, but enhance financial self-sufficiency of the canal under the terms of the treaty.

Finally, our amendments would also protect a substantial and important part of our Nation in the implementing legislation, and thereby be in the national interest.

We thank you Mr. Chairman, for this opportunity to testify. We offer our full resources and assistance to the committee to help assure satisfactory resolution of these important issues.

Mr. HUBBARD. Thank you, Mr. Lidinsky.

We are now under a second bell on a quorum call in the House of Representatives. But we have 9 minutes to go. I would recommend we recess for 1 hour and come back at 1:30, and we should be able to complete today's hearing within about 45 minutes, an hour at the most. There are not many of us to ask you a lot of questions. And we have but two more, perhaps three more witnesses after we hear Mr. Brandes.

Sorry about that. You were the only one not introduced, and you are the only one outstanding now.

We will hear you at 1:30.

Mr. TREEN. Mr. Brandes, do you intend to summarize your statement?

Mr. HUBBARD. Can you come back at 1:30?

Mr. BRANDES. Yes, sir

My statement is only 7½ minutes long.

Mr. TREEN. Mr. Chairman, are we going to ask questions of this panel before the other witnesses?

Mr. HUBBARD. Let us do that, yes.

Mr. TREEN. Good. I do have a number of questions I want to ask them.

Mr. HUBBARD. See you at 1:30.

[Whereupon, at 12:35 p.m., the subcommittee recessed to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Mr. HUBBARD. The Subcommittee on Panama Canal will now resume, recess being over.

We will go ahead now and ask Mr. Brandes' president of International Research Associates, to give us your statement, please.

Mr. **Brandes**. Thank you, Mr. Chairman.

My name is Ely M. Brandes, and I reside at 554 Madison Way, Palo Alto, Calif. I am an economist and president of International Research Associates, a small economic research company, also of Palo Alto.

For the past 15 years I have been an economic consultant to the Panama Canal Company on the subject of tolls and revenues and I have authored more than 20 studies on that subject. Most of my work has been related to the question of the sensitivity of canal traffic to toll increases, of how much traffic might be lost if tolls were increased.

When I first began to look at this question, some 15 years ago, the prevailing public wisdom was that canal tolls could be increased by 300 percent or more with no visible traffic losses, because the only obvious alternative for ships was to go around the Horn. But this supposedly obvious view of alternatives turns out to be totally erroneous.

In order to understand the question of how sensitive Panama Canal traffic is to change in tolls, one must first realize that such sensitivity is not uniform for all ships. Instead, total canal traffic is composed of some 70 to 100 commodity-route segments, which are groups of ships that carry the same commodities and travel the same route. Bulk carriers which carry grains from gulf ports to the Far East are one such commodity-route segment. Others include banana boats which carry bananas from Ecuador to the east coast of the United States, tankers which carry crude oil from Alaska to the gulf, container ships which carry manufactured goods from Japan to the east coast or bulk carriers which move coal from Virginia to the Far East and so on.

Now the sensitivity of these and other canal movements to toll increases varies greatly depending upon the alternatives available to the buyers and sellers involved and the cost of these alternatives. For grain shipments to the Far East a partial alternative is to move the grain by rail to the west coast and ship it from there. An alternative to banana shipments from Ecuador is to shift to purchases from Caribbean areas and from Mexico; for shipment of containerized cargo from the Far East to the east coast of the United States the alternative is to ship the containers to the west coast and from there move them by rail to the various destination points in the east. This is the well-known minibridge movement. There are many, many other alternatives for these and other traffic segments and practically none of them involves a trip around the Horn.

Now until 1974, when the Panama Canal Company instituted the first toll increase in its history, the debate about the sensitivity of traffic to toll increases was academic. But after the toll increases of 1974 and 1976, which in the aggregate amounted to nearly a 50-percent increase, we had a chance to examine the various theories, and we found that toll increases of 50 percent or less did result in some traffic losses. Specifically, we discovered that shipments of containerized cargo between the Far Fast and Europe, shipments of coal from Virginia to Japan and, most important, shipments of container cargo, which consists mostly of manufactured goods, between the Far East and the United States were affected by the toll increases of 1974 and 1976. A large portion of container movement between Europe and the Far East was shifted to the Suez Canal; some coal exports from the United States are now being shipped in larger vessels via the Cape of Good Hope, and minibridge shipments via U.S. west coast ports have greatly reduced the number of container ships which operate between the Far East and the United States via the Panama Canal. Part of the above losses would probably have occurred without the toll increases. But the toll increases undoubtedly made these losses larger.

In spite of these losses, total Panama Canal traffic has still shown some gains in the last 2 years, primarily because new traffic segments have added substantially to total revenues. Among them are the well-known Alaska oil shipments and the resumption of grain shipments to the People's Republic of China. However, in the long run, the Panama Canal cannot always count on being fortunate enough to have new traffic offset losses in existing traffic.

Traffic losses due to toll increases represent a substantial danger to the economic lifespan of the canal. As you know, the operation of, the canal involves a substantial fixed cost which, like all business operations, will be affected by the continued impact of inflation. Once a situation is reached where traffic losses due to toll increases are larger than the normal traffic growth of the other segments, the Panana Canal will then be in danger of losing its ability to be economically self-supporting. Its future then may well be to join the rank of congressional dependents, a la Amtrak, which must appear here annually, hat in hand, to beg for their sustenance.

Having spent a good part of my professional career on the subject of the Panama Canal, I would like to do what I can do to prevent this from happening. It is for this reason that I decided to testify before this committee. Unwarranted toll increases, and the traffic losses which these engender, also could have detrimental effects on ports on the gulf coast and on the Atlantic coast and on their economies. Colonel Haar, Mr. Lidinsky, and Mr. Prior, who are with me, are from these areas and their local knowledge makes them much more qualified to discuss the regional impacts of toll increases. I want to concentrate my remarks on the relationship between toll increases and the economic viability of the Panama Canal.

Last year in January my associate, Mr. Randall Chun, and I completed a study entitled "Panama Canal Traffic and Revenue Study 1978–2000" indicating the contents of which are well known to some members of this committee and to the staff. In this study we tried to assess the revenue potential of the Panama Canal for the next 22 years. Among its many findings and conclusions there were some new estimates concerning the sensitivity of canal traffic to further toll increases. I would like to present these complex findings in a simplified and summary form.

We found, first of all, that in response to toll increases of up to 50-percent, traffic losses would be relatively modest and amount to no more than 12 percent in terms of tonnage. The 50-percent higher tolls would easily offset the 12 percent loss in traffic and the canal would gain in total revenue.

With toll increases of more than 50 percent, however, we found that traffic losses, in terms of tonnage, become quite substantial and that the revenue gains that can be achieved by going beyond a 50-percent toll rate increase are quite minimal. These traffic losses become so substantial in the case of toll rate increases of more than 100-percent, that a 150-percent toll rate increase for instance would actually yield less total revenue for the Panama Canal than a 50-percent increase in toll rates.

During the last 2 weeks I have reviewed the findings of our 1978 study in the light of the most recent events and I have come to the conclusion that our estimates are still generally valid. If anything, the sensitivity of some movements has increased during the past year. And among the movements which I would regard as the most sensitive are the movements of containerized cargo—mostly manufactured goods—between the Far East and the east and gulf coasts of the United States. As I said earlier, much of this movement has already been diverted to west coast ports with connecting rail transportation to the east, and more may be diverted in the future. While such diversions are obviously less serious than a total loss of trade, there is no question but that Atlantic and gulf coast ports are being affected by these losses.

It is my understanding that in the near future the Panama Canal Company will recommend a toll increase which is necessary for the implementation of the Panama Canal Treaty and that this toll increase may be as high as 35 percent, depending upon the financial requirements that may be imposed upon the Panama Canal Commission. If an initial toll increase of such magnitude were put into effect, much of the margin of relatively safe toll increases will have disappeared. Thereafter even small toll increases may precipitate large traffic losses.

How can we prevent the economic decline of the Panama Canal and its possible loss of financial independence and at the same time prevent economic losses on our gulf and Atlantic coasts? I believe this can be done by creating conditions that will keep future toll increases to an absolute minimum.

I am not an expert on drafting legislation and I will therefore refrain from suggesting or endorsing any specific provisions which might achieve this overall goal. However, I believe that my background qualifies me sufficiently to recommend certain objectives in this area; and it is my conviction that if the Congress can succeed in translating these general objectives into specific and effective language, we will have gone a long way toward assuring the financial viability of the new Panama Canal Commission.

The first objective should be to create in the new Panama Canal Commission a trim, efficient, business-like organization which is conscious of the need to maintain an economically viable enterprise. As you know, the Panama Canal Company was, and is, a unique organizational creature, combining both governmental and business functions under one roof. I believe that the Company performed its complex task admirably; but I also believe that the Company never was a model for trim, low-cost operation. I would hope that the new Commission, which will not be burdened with governmental functions, can be organized along more economical lines than the present Company, and that the implementing legislation and subsequent budgetary reviews by Congress would insure such a course of development.

The second objective which I advocate is that no extraordinary financial obligations be imposed on the Panama Canal Commission which would require toll increases beyond that needed by the Panama Canal Treaty itself. It has been proposed that the Panama Canal Commission be required to pay interest on its original investment of about $320 million and perhaps even amortize that investment in the 21 years remaining under the treaty. I am opposed to such a requirement on two grounds. First, such payments would require an additional toll increase, beyond the needs of the treaty itself. Second, as an economist, I am opposed to the principle that public works projects must justify their creation by an ability to pay continued interest on the original investment and even pay back the investment. If such a requirement were imposed on all public works projects, very few would ever be built.

The third and last objective which I advocate is that every request for a toll rate increase by the Panama Canal Commission be subjected to a searching public review. I believe that the need for such public review is now well understood by all concerned and I hope that the final language in the bill will reflect this.

Last year I testified at the hearings held by the Senate Foreign Relations Committee on the Panama Canal Treaties. At that time I said that no one can predict whether the canal can continue on a financially self-supporting basis for the remainder of this century. I would make the same statement today. However this inability to predict the future precisely should certainly not prevent us from doing what we can to extend the economic lifespan of the canal and maintain its financial independence for as long as we can. I believe we would be remiss if we failed to do so.

I thank you, sir.

Mr. HUBBARD. Thank you, Mr. Brandes.

I ask unanimous consent to have report on the subject of the financial viability of the Panama Canal Commission as prepared for this subcommittee by the Congressional Budget Office entered into the record.

Mr. TREEN. No objection.

Mr. HUBBARD. Hearing no objection, it is so ordered.

[The following was received for the record:]

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Alice M. Rivlin
Director

December 19, 1978

The Honorable Robert L. Leggett
Acting Chairman
Panama Canal Subcommittee
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On January 4, 1978, the late Ralph H. Metcalfe, Chairman of the Panama Canal Subcommittee, requested the Congressional Budget Office to examine the effects of the new treaty on Panama Canal traffic and toll levels to assist the subcommittee in its consideration of the implementing legislation of the new treaty.

To augment its own resources, the Congressional Budget Office, after reviewing competing bids, let a contract to the Maritime Studies Group of Temple, Barker, and Sloane, Inc. (TBS), of Wellesley Hills, Massachusetts. The executive summary and final report from TBS have already been provided to the Subcommittee staff.

Based on the major studies currently available to CBO, it appears that the traffic presently transiting the Canal is relatively price inelastic to toll rate increases in the 25 to 40 percent range. An increase of this magnitude should be sufficient to cover the expenses of the new Canal Commission in the short term, with periodic toll rate increases necessary in future years to offset increased costs due to inflation. Barring some unforeseeable events, the Commission should remain self-sustaining and require no appropriations to support Canal operations.

The attached document provides in detail the methodology employed, and the basis for the revenue and expense projections.

Sincerely,

Alice M. Rivlin
Director

Attachment

Attachment

Report of the Congressional Budget Office
on a Study of Panama Canal
Tolls and Traffic Levels

Background of Study

On January 4, 1978, the Panama Canal Subcommittee asked the Congressional Budget Office to examine the effects of the new treaty on Panama Canal traffic and toll levels. This information would assist the Subcommittee in determining:

(1) What increase in tolls would be needed to meet new obligations arising from the treaty;

(2) What effect the increase in tolls would have on the volume of traffic presently transiting the Canal;

(3) At what level the increase in tolls would make Canal transit economically unfeasible for shippers; and

(4) The approximate amount of appropriations necessary to meet responsibilities to the Republic of Panama if traffic transiting the Canal is not of sufficient magnitude to meet the new obligations.

Because of the limited time then available, it was decided that the best basis for the necessary analysis would be two recently completed studies of Panama Canal finances and traffic. Those two studies were: Assessment of the Financial Impact of the Proposed Canal Treaty prepared by American Management Systems, Inc., (AMS), on January 26, 1978, for the Senate Armed Services Committee; and Panama Canal Traffic and Revenue Study, 1978-2000, prepared by International Research Associates (IRA) on January 1978, for the Panama Canal Company and the U. S. Department of State. After reviewing competing bids, the Congressional Budget Office let out a contract to the maritime studies group of Temple, Barker, & Sloane, Inc. (TBS), of Wellesley Hills, Massachusetts, a firm with substantial experience in preparing similar studies for a variety of clients. TBS was directed to review and critique previous studies (with emphasis on the two mentioned above), and on the basis of that review and the firm's expertise in the maritime field, to perform an analysis of the sensitivity of traffic through the canal to toll rate increases. It was further decided that, due to the uncertainty regarding passage and final language of the proposed treaty, the TBS study would concentrate on traffic sensitivity to toll rate increases of 25 percent and 40 percent, by individual commodity. This would allow for developing a range of revenue estimates over time and highlighting those commodities most sensitive to toll rate increases. In addition, TBS was to consider existing and projected trends in the use of the rail land bridge, tankers by size for different commodities, alternative sources for both origin and end-point shipping, and product substitution.

Traffic Projections

As a basis for its analysis, TBS reviewed existing forecasts of Panama Canal traffic and defined high, low and most likely projections of Canal traffic through the year 2000, assuming current toll rates increased throughout the study period consistent with general inflation. (See Table 1.) The high forecast, AMS-Padelford and Gibbs, 1/ is an aggregate traffic forecast, projecting a 3.64 percent annual growth rate, somewhat below the rate of world trade due to reduced competitiveness of the Panama Canal. The low forecast, AMS-CACI, 2/ a disaggregate forecast in which newly developing traffic is not included, projects a 1 percent annual growth rate, based on the assumption of no Alaskan oil flows and a high rate of diversion by coal shippers to large dry bulk and combination carriers.

TBS developed a most likely traffic projection, based on independent analysis of the IRA traffic projection, which is a disaggregated, commodity-specific forecast. A major tool for review of the IRA estimate was the Maritime Administration's Cargo Forecast Model, which is a trade forecast model that considers supply and demand factors, and is based on economic and industrial models that explicitly recognize the U. S. balance of payments, growth patterns of major trade partners, exchange rates, strikes, tariff and non-tariff barriers to trade. Based on this model and TBS review, it was found that the IRA forecast provides a generally realistic projection of Panama Canal traffic. The difference between the IRA forecast and the TBS most likely forecast is the projected volume of Alaskan crude oil movements through the Panama Canal. These differences are depicted by Table 2. The TBS study, which is based on more recent information than the IRA report, projects a higher near-term utilization of the Canal and the phasing out of Alaska crude oil shipments through the Canal by the year 2000. TBS projections assume a 1982 date for operational start of the SOHIO pipeline and a steady, regular growth of West Coast consumption of Alaskan oil.

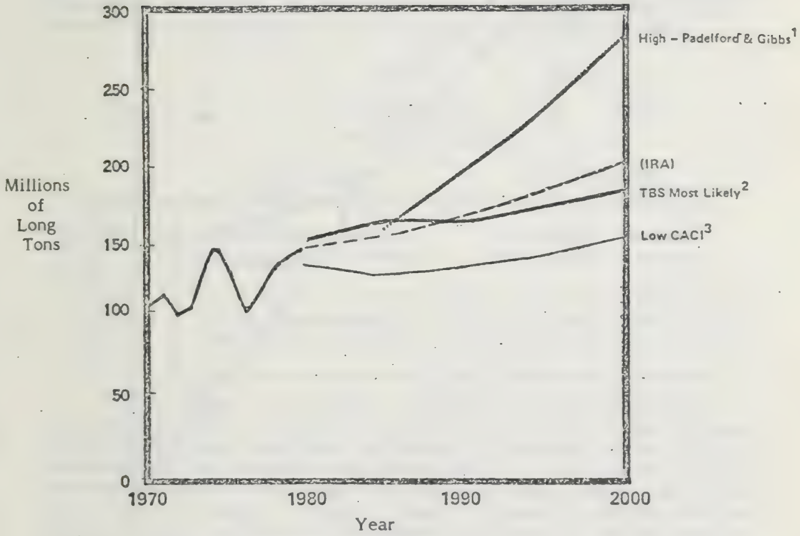
1/ Padelford, D. and S. Gibbs (1975), Maritime Commerce and the Future of the Panama Canal, Cambridge, Maryland. Connell Maritime Press, Inc.

2/ CACI (1977), U. S. National Security Interests in the Panama Canal: Projections Over Time, Arlington, Virginia, CACI, Inc.

Table 1

PANAMA CANAL TRAFFIC

HIGH – MOST LIKELY – LOW SCENARIOS



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[1] High Scenario forecast utilizes TBS study for 1979-1985 projection.

[2] TBS study based upon IRA forecast. Adjusted for Alaskan crude oil and new cargos.

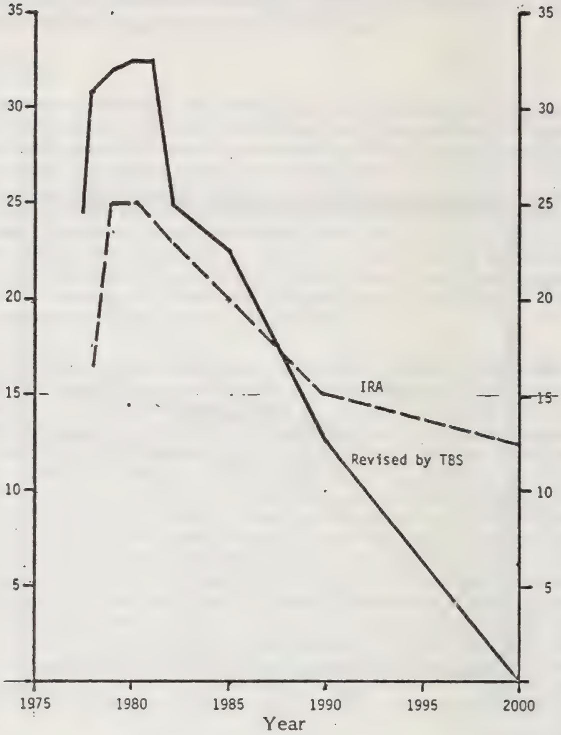
[3] Low Scenario forecast.

	Forecast Values (millions of long tons)				
	1979	1980	1985	1990	2000
High	153	156	166	196	281
TBS Most Likely	153	156	166	166	185
Low	—	136	131	137	155

TABLE 2

ALASKAN CRUDE OIL MOVEMENTS
VIA PANAMA CANAL

(millions of long tons)



Revised Alaskan Oil Forecast

(million bbl/day)

	1978	1979	1980	1981	1982	1985	1990	2000
Trans-Alaska	1.200	1.200	1.200	1.200	1.600	1.600	1.600	1.600
Southern Alaska	.150	.150	.150	.150	.150	.150	.150	.150
Less:								
West Coast Consumption	.730	.710	.700	.700	.750	.800	1.000	1.250
SOHIO Pipeline	--	--	--	--	.500	.500	.500	.500
Via Panama Canal	.670	.640	.650	.650	.500	.450	.250	--

Sources: 1978-1982, Assessment of Alaskan Crude Oil Distribution, U.S. Department of Commerce, Office of Policy and Plans. May 3, 1978. 1985-2000 TBS projections.

Sensitivity of Traffic to Rate Increases

For some types of traffic, a certain toll increase will have sufficient impact on total transportation costs to cause shippers to use a different route or a different mode, or to shift origin or destination so as not to use the Canal, or not to ship at all. As a result, an increase in rates does not generate a proportional increase in toll revenues.

Based on an analysis of the various commodities moving through the Canal, the IRA study projected that a 25 percent rate increase would result in a 4.4 percent traffic loss by 1990, and therefore produce a revenue increase of only 20 percent. IRA estimated that a 40 percent toll increase would result in a traffic loss of 8.8 percent by 1990, thereby causing revenues to rise by only 28 percent. TBS also performed a commodity-by-commodity review, but projects lower overall traffic losses and higher revenues for rate increases of 25 to 40 percent. (See Table 3 below.)

TABLE 3

Impact by 1990
of a rate increase in 1980

	25% toll increase	40% toll increase
IRA	4.4% loss in traffic 20% increase in revenue	8.8% loss in traffic 28% increase in revenue
TBS	1.3% loss in traffic 23% increase in revenue	2.1% loss in traffic 37% increase in revenue

TBS estimates a traffic loss of slightly more than 1 percent for a 25 percent toll increase, and of about 2 percent for a 40 percent rate increase. The primary reason for these estimating differences is the differing assessment of the economics and attractiveness of the principal shipping alternatives. Table 4 shows the ten major commodities that constitute 85 percent of total traffic diversion and 89 percent of total revenue loss projected by IRA by the year 1990, assuming a 40 percent toll rate increase. These are ranked in descending order of revenue loss. The TBS conclusion as to the extent of likely diversion for each of these commodities is shown in Table 5, with a brief explanation in the final column. The TBS analysis indicates that the only commodities that may be sensitive to toll rate increases in the relevant range and for which economically viable alternatives exist are iron ore, petroleum products, bananas and sugar.

TABLE 4

COMPARISON OF SENSITIVITY ANALYSES

40 PERCENT TOLL INCREASE

Commodity	IRA Projected Principal Diversion Alternative	Share of IRA Projected Diverted Traffic	Share of IRA Projected Diverted Revenue	Results of TBS Sensitivity Analysis
General Cargo	Alternate Routes/Landbridge	9%	15%	No Diversion Likely
Crude Petroleum	Alternate Routes/Large Vessels via Cape Good Hope	16%	14%	No Diversion Likely
Coal	Alternate Routes/Large Vessels via Cape Good Hope	21%	14%	No Diversion Likely
Bananas	Alternate Sources/Landbridges and Planting	4%	11%	Concur with IRA Projection
Autos & Trucks	Alternate Routes/Landbridge	1%	9%	No Diversion Likely
Petroleum Products	Alternate Sources/Product Exchange	9%	8%	Concur with IRA Projection
Coarse Grains	Alternate Routes/Large Vessels via Africa	12%	8%	No Diversion Likely
Steel & Iron Manufactures	Alternate Routes/Landbridge	5%	5%	No Diversion Likely
Iron Ore	Alternate Sources/Product Exchange	5%	3%	Concur with IRA Projection
Sugar	Alternate Sources/Product Exchange	3%	2%	Concur with IRA Projection
10 Commodities Total		85%	89%	
Total All Commodities		100%	100%	

TABLE 5
COMMODITY SENSITIVITY AND COMMENT

Commodity	IRA Projection of FY1990 Share of Commodity Diverted	Results of TBS Sensitivity Analysis	Comments
General Cargo	6%	No Diversion Likely	Canal toll constitutes less than 1% of total freight bill, landbridge cost will escalate significantly in near term.
Crude Petroleum	10%	No Diversion Likely	Large tankers via Cape Horn are not competitive.
Coal	17%	No Diversion Likely	Large bulk vessels must top off with iron ore; current activity is all-Japanese stop gap measure in depressed market.
Bananas	25%	Concur with IRA Projection	Banana industry is very sensitive to toll rate increases.
Autos & Trucks	7%	No Diversion Likely	Landbridge costs are non-competitive; backhauls are significant advantage of Canal transit.
Petroleum Products	12%	Concur with IRA Projections	Product exchange is a feasible alternative.
Coarse Grains	5%	No Diversion Likely	Large bulk vessels via Cape Horn are not competitive.
Steel & Iron Manufactures	7%	No Diversion Likely	Landbridge costs are not competitive; backhauls are significant advantage of Canal transit.
Iron Ore	41%	Concur with IRA Projection	Realignment of sourcing is imminent. Atlantic basin ore transport costs are competitive.
Sugar	14%	Concur with IRA Projection	A cross-hauled commodity; source realignment and substitution are feasible.
10 Commodities Average*	13.7%		
Total All Commodities	8.8%		

*Average is unweighted.

Despite these differing estimates, the overriding conclusion of both the TBS and IRA studies is that Panama Canal traffic is relatively insensitive to a toll rate increase of up to 40 percent, and that such an increase, if necessary, would not result in a substantial traffic loss. Canal tolls are a relatively minor part of the overall shipping cost and of the total cost of the commodities transiting the Canal. In many cases, an alternative to Canal transit is not feasible. Where there is an alternative, the Canal is in most cases still economically competitive, even with a rate increase in the range of 25 to 40 percent.

Projected Financial Results

The new Panamal Canal Treaty ends the arrangements under which the United States has operated the Panama Canal for the past 75 years. The United States is required to abolish the Panama Canal Company and the Canal Zone Government, and to transfer major support activities to the Republic of Panama or the U. S. Department of Defense. Significantly larger treaty payments to the Republic of Panama are required. Also, to exercise the grant of specific powers to operate and maintain the Canal, a new Panama Canal Commission is to be formed under U. S. law. The United States is required, upon termination of the Treaty, to turn over the Canal in operating condition free of liens and debts, except as the two parties may otherwise agree.

The new Treaty payments include a payment under Article III, Section 5 for public services to be provided to the Canal operating and housing areas retained by the United States. Under Article XIII, Section 4, the United States is required to pay out of the revenues of the Canal Commission an amount computed at the rate of 30 cents per Panama Canal (PC) ton for each vessel transiting the Canal for which tolls are charged; a fixed annuity of $10 million; and contingency payments of up to $10 million per year from any operating surplus.

An estimate of the increase in tolls needed to meet the new obligations of the Commission requires a projection of the cost of operating the new Commission and the treaty payments to the Republic of Panama. CBO has projected these costs through 1984, based on the following assumptions:

(1) The Commission will be a government corporation, patterned after the Panama Canal Company;

(2) The corporation will use accrual accounting;

(3) The interest payment to the U. S. Treasury is foregone;

(4) Capital investment will be made from cash generated by depreciation and a capital reserve included on the toll base;

(5) The fixed fee, toll fee, and payment for services in Article III, Section 6 will be an expense of the corporation and included on the toll base;

(6) The Article XIII, Section 4(c) contingency payment is not an expense of the Commission; and

(7) The costs of the Commission will increase due to inflation tied to the inflation in the U. S. economy.

Table 6 shows the projected financial results of the Canal operation, assuming a 25 percent one-time rate increase, followed by small annual increases as necessary. Estimated traffic volume is derived from the TBS baseline projection, adjusted for the TBS estimate of the effects of the rate increase.

Under these assumptions, a twenty-five percent increase generates sufficient revenues to cover costs through 1982. Periodic toll rate increases will be needed thereafter to cover the increased costs of operation due to inflation. If the non-toll revenues are increased to recover inflation, then toll rates would not need to keep pace with inflation, because growth in canal traffic will provide some increase in revenues. As a result, rate increases of less than 2 percent would be necessary in 1983 and 1984.

Application of the IRA elasticity and baseline traffic estimates would change the results somewhat, but not drastically. A 27 percent rate increase would be necessary to break even in 1980, with approximately 2 percent increases each year through 1984 to keep pace with increasing costs.

The major uncertainty in these projections is on the revenue side. Traffic in any one year may deviate from the long-term trend as a result of short-term fluctuations in trade patterns or total volume of traffic. With or without a Treaty, a substantial downturn in world trade, resulting, for example, from a world-wide recession, would seriously affect the financial results of Canal operations during the downturn. If any surplus generated in years of greater than expected traffic is paid to the Republic of Panama in the Article XIII, Section 4c contingency payment, then larger rate increases than those discussed above would be needed to finance operations during a temporary downturn in traffic.

The cost projections, on the other hand, are relatively insensitive to traffic volume, but would be affected marginally by variations in the rate of

TABLE 6

Projected Financial Results
With a One-Time Twenty-five Percent Toll Increase
and Small Annual Increases Beginning in 1983

(by fiscal years, in millions of dollars)

	1980	1981	1982	1983	1984
			Expenses		
Operating Expenses 1/	232	247	255	265	282
Capital Reserve 2/	6	6	7	7	8
Transition cost 3/	8	4	6	3	-
Fixed Annuity	10	10	10	10	10
Reimbursement for services 4/	10	10	10	13	13
Toll fee 5/	49	50	50	51	51
Total Costs	316	327	337	349	364
			Revenues		
Non-Toll Revenue 6/	67	73	76	81	88
Toll Revenue 7/	255	258	261	268	276
Total Revenue	322	331	337	349	364
Surplus or (Deficit)	6	4	0	0	0
Assumed Toll-Rate Increase	25.0%	---	---	1.6%	1.9%

NOTES TO TABLE 6

1/ Expenses were based on estimates prepared by the Panama Canal Company (released January 31, 1978) and inflated using economic assumptions associated with the 1979 Second Concurrent Resolution on the Budget. They include depreciation, which was not inflated but which contains an estimate of depreciation from new capital investment occurring during the projection period. It is assumed that costs in any year are fixed over the relevant range of traffic levels.

2/ A five-year capital plan was not available to CBO. A capital investment program was estimated by projecting the new program level for fiscal year 1979 through the five years. The five-year total of $152 million is close to the $153 million five-year total for Canal Company projects discussed in the 1978 hearings before the House Appropriations Subcommittee on Transportation and Related Agencies. For each year, total estimated depreciation is subtracted from the estimated capital program cost to derive the amount to be recovered through a capital reserve charge.

3/ Transition costs were based on estimates prepared by the Panama Canal Company on January 31, 1978. Those estimates assumed a fiscal year 1979 implementation. Nearly 80 percent of the cost shown for 1980 is for separation and relocation, which may be incurred and expensed in fiscal year 1979.

4/ The payment for services was assumed to be increased after the first three-year period due to inflation.

5/ Toll fee payments were interpolated from TBS traffic estimates assuming a one-time 25 percent toll increase and 30 cents per ton payment.

6/ Non-toll revenue was based on estimates by the Panama Canal Company, assuming that all cost increases due to inflation are passed through in higher charges.

7/ Toll revenue was calculated using a traffic base interpolated from TBS estimates, assuming a 25 percent rate increase. The traffic base in long tons was converted to revenue using IRA assumptions that a PC ton is equivalent to 1.05 long tons and that 86 percent of traffic is laden.

inflation. As a result, changes of 1 to 2 percent in the forecast inflation rate would primarily be reflected in small changes in the timing and amount of the annual rate adjustments necessary after the large, one-time increase.

Reservation 6 of the resolution of ratification of the new treaty requires the Commission to reimburse the U. S. Treasury for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States. However, the proper base for calculating an interest payment for the new Commission is unclear. Currently, the interest-bearing contributed capital is approximately $319 million and the interest rate charged is the average interest paid on government bonds. On November 30, 1978, the average interest rate on bonds was 6.7 percent and rising. At that rate, the interest payable would be over $21 million. The interest-bearing contributed capital was calculated in the last reorganization of the Canal enterprise in the early 1950s and is considerably less than the current investment of the United States in the Canal Company, which totals $512 million as of September 30, 1977. In the past, the Canal Company received credit for assets transferred from the Company. Approximately $92 million of the $319 million will be transferred to other U. S. agencies or the Republic of Panama.

Table 7 below shows the impact on toll rates if a $21 million interest payment were to be generated from toll revenues, based on the TBS traffic projections.

TABLE 7

(by fiscal years, in millions of dollars)

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
Total costs without interest	316	327	337	349	364
Interest payment	21	21	21	21	21
Non-toll revenue	-67	-73	-76	-81	-88
Amount to be received from tolls to cover costs	270	275	282	289	297
Toll rate increase needed to break even	32%	1.0%	1.8%	1.4%	1.7%

> On this basis, a one-time increase of over 32 percent would be needed to meet costs in 1980, followed by small annual increases thereafter. Traffic would be less than 2 percent below the baseline projection as a result of the rate adjustment. Applying the IRA sensitivity projections, the Commission would require a 40 percent one-time increase to meet operating costs plus the interest payment, resulting in a traffic loss of about 9 percent by 1985.
>
> Conclusions
>
> Based on the major studies currently available, it appears that the traffic presently transiting the Canal is relatively price inelastic to toll rate increases in the 25 to 40 percent range. An increase of this magnitude should be sufficient to cover the expenses of the new Canal Commission in the short-term with periodic toll rate increases necessary in future years to offset increased costs due to inflation. Barring some unforeseeable events, the Commission should remain self-sustaining and require no appropriations to support Canal operations.

Mr. HUBBARD. I might say, Mr. Brandes, this report generally confirms the conclusions you drew in the report you did with Mr. Chun. I will start my questions with you, since you were the last person to speak.

What appear to be the growth trends of large commodity groupings other than North Slope oil transiting the canal?

Mr. BRANDES. For some, they are quite excellent. It is our belief, for example, that growth will continue in grain exports from the United States which have been increasing at an absolutely phenomenal rate. Everything that we see seems to indicate that the United States can grow and sell very large amounts of grain abroad. There may be some problems about the ability to ship all this grain, but I hope we can overcome those problems.

In other areas, the prospects are a little bit more mixed. Some of the commodities which, in the past, have been so-called staples of the Panama Canal like coal from Virginia to the Far East, or iron ore from the west coast of South America to the east coast of the United States, have tended to dwindle in recent years. They have been supplemented by other commodities.

For instance, one of the largest revenue earners is importation of automobiles from Japan, which are shipped through the canal.

But again this is a traffic segment that might be endangered by diversion to the west coast.

I would like to add one additional traffic area where the prospects are very good, and that is in exports to China. All the prospects seem to be that certainly our grain exports to China will continue to increase over the next few years, and other exports as well.

Mr. HUBBARD. You have said that no one can predict whether the Canal can continue on a financially self-supporting basis for the remainder of this century. By the same token, do you have any information that would indicate that the canal cannot continue on a self-supporting basis?

Mr. BRANDES. No, I do not have any. If you try to look ahead for more than 5, 7 years, the crystal ball gets very cloudy. One has to make assumptions about the future. If you make an assumption, such as: if things were to continue as they are now, we are, in effect, saying we cannot predict what will happen.

Mr. HUBBARD. Do you believe that early retirement and other employee benefits should be included in the toll rate base as suggested in the bill introduced by Chairman Murphy?

Mr. BRANDES. I heard about this for the first time today. And my initial feeling is that it should not be included. I say this because it seems to me this is not really a cost of the business of the canal, which is the transiting of ships. What we are doing with respect to our employees in the canal—and I certainly believe that what we do is fully justified—we do as a nation vis-a-vis people who have served this country well. But I do not see that this is in any way connected with the business of the canal. We are rewarding them for past services. This, to me, is quite different from paying for the current costs of operating the canal.

Mr. HUBBARD. In a 1974 study you determined that: "U.S. business and consumers are the ultimate payers of about one-third of all tolls paid at the Canal."

Does this hold true today?

Mr. BRANDES. Yes.

Mr. HUBBARD. Could the U.S. suffer more than one-third of economic losses resulting from higher tolls?

Mr. BRANDES. I do not think the proportions have changed very much. There was a remark made this morning that the United States is involved in two-thirds of the total traffic if you add together cargo which originates in the United States and cargo which is received in the United States. But this particular exercise has a universe of 200, because all cargo has an origin and a destination point. And they are mostly in two different countries. So it still comes out that the United States is the ultimate payer of about one-third of the tolls paid at the Panama Canal.

I do not think the proportions have changed very much.

Mr. HUBBARD. My last question is, in studying the issue of tolls sensitivity, you may have—excuse me just a moment here.

OK. That is the life of a Member. You hear bells and beepers.

In studying the issue of tolls sensitivity, you may have come to some conclusion as to whether frequency of tolls adjustments affects user confidence. If you had to choose between the two alternatives, with the objective of retaining traffic, would you have fewer tolls increases of greater magnitude or more frequent smaller increases?

Mr. BRANDES. I would have more frequent smaller increases with one proviso, that they should not be made in a manner so that they become totally predictable. In other words, if the Commission were to operate on the basis of, let us go in every year for the 10-, or 9-, or 7-percent increase, then the shipping public would come to expect that and instead of simply counting one additional toll increase next year, they might make plans on the basis of the total increase that can be expected during a 5 or 10-year span. They would be acting not on the basis of then current tolls, but what they might expect 5 and 10 years hence.

I would say yes, smaller increases are better because in an inflationary economy, the small increases are sort of expected. But do not make them so they become totally predictable as to size and frequency.

Mr. HUBBARD. Congressman Treen.

Mr. Treen. I think it is very important we protect the investments we have in the ports of this country. My questions are all related to that.

You were asked, Colonel Haar, the first question you alluded to—I have been provided by counsel with the questions—what will be the impact of toll increases on the Panama Canal ports?

You have attachments to your statement which you refer to on page 4. What you are giving us in that table is the total economic impact, is that correct?

Colonel Haar. That is correct.

Mr. Treen. I think the question was impact of the toll increases.

Colonel Haar. We have used a U.S. Maritime Administration study done on the impact of waterborne commerce on the Nation, and we have correlated those findings and standards to the specific trade and commerce that moved all along the Atlantic and gulf regions, and then projected it as an overall economic impact for each region involved.

Mr. Treen. Where is that? Is that in your statement?

Your table that you give in your statement is the total economic impact of waterborne shipments via the Panama Canal. I am trying to pinpoint what the effect of various toll levels would be economically.

Colonel Haar. What we have assumed, taking the study and applying it to our respective percentages of Panama Canal waterborne commerce, which was generally 20 percent of that moved overall through the Atlantic and gulf areas. Then, coming up with an impact in terms of what the benefits of that is now, assuming that would be lost if you had diversions through tolls that were too high.

I have a detailed breakout of how this was arrived at. I will be happy to give you this for the record. In the interest of simplicity, I did not put these details in as part of my statement.

Mr. Treen. What you have given is total economic impact of commerce through the canal. We want to know what it would be if you raised the tolls.

Mr. Brandes. I made a little comment on that in my statement.

Mr. Treen. What levels must be reached before the shipper switches to the minibridge?

Can you do that? I realize you have a lot of——

Mr. Hubbard. Before he answers that, forgive me, but I have to ask for recess for our voting.

Mr. Treen. That is all right. I thought I could get it in.

Mr. Hubbard. I am sorry. We have got to go.

Mr. Treen. Be right back, I guess.

Mr. Hubbard. We'll recess for 10 minutes, OK, and be right back.

[Short recess.]

Mr. Hubbard. My apologies for the delay on the House floor. The Subcommittee on the Panama Canal will now resume. I just have one question for Mr. Prior. Before I do that, you were not finished, were you?

Mr. Treen. No.

Mr. Hubbard. Go ahead.

Mr. TREEN. I was rushing because I was trying to get the question answered before we went to the floor. Now that we are not under the pressure, let me rephrase my question.

Colonel Haar, we have in your statement, both on page 4 and as an attachment the total impact on the Atlantic and gulf coast ports of shipments transiting the Panama Canal, the total economic impact.

Colonel HAAR. Yes, that is correct.

Mr. TREEN. Of course, what I am interested in is determining what the impact of toll increases will be. I realize you have got different kinds of cargo, different I think you call it segments of cargo, that will react differently to toll increases.

Are we able to quantify the effects in terms of dollars and jobs of specific toll increases on any of the various segments of trade?

Colonel HAAR. I think Dr. Brandes could probably address that.

Dr. BRANDES. Let me try. We make our sensitivity estimates on the basis of total traffic. As a norm, I would say that one can use that average as a guideline for any portions of traffic.

So I would say in response to a 50-percent total increase a 12-percent decline in tonnage which is what is foreseen in our sensitivity study, would be the norm. For the gulf and Atlantic coasts, I would probably think that the decline might be slightly above average.

So I am thinking in terms of perhaps a 15-percent decline in traffic for these ports in response to a 50-percent total increase. If we further qualify this, obviously the diversion of traffic refers not necessarily to total losses of trade.

They refer to losses to the canal, and obviously, in this instance, also to losses to the ports where the ships originated or were destined to. They do not necessarily involve a total loss in trade.

For instance, if grain shipments were to be diverted via the west coast, the farmers in Iowa and Nebraska would still be selling their grain, but the Port of New Orleans would be losing that particular trade.

So our estimates are that both the gulf and the Atlantic coast in response to a 50-percent total increase would probably suffer a loss of trade which is slightly more than 12 percent.

Mr. TREEN. You say a 50 percent. Over what period of time are you talking about?

Dr. BRANDES. We are talking about a onetime increase amounting to 50 percent or more. There is another time dimension involved here. Foreign trade activities involve long-term contracts, and the full effect of a toll increase is not necessarily felt the first or second year. It takes time for changes to become effective.

Obviously over time, many other things happen, too, so that the effect does tend to get lost a little; but I still believe that a 15-percent decline, more or less, is likely in response to a 50-percent toll increase. This would be a good yardstick to use for the ports on the gulf and the Atlantic.

Mr. TREEN. When you talk about a 15-percent decline, you are talking about tonnage?

Dr. BRANDES. That is right. We are talking about tonnage.

Mr. TREEN. Not necessarily revenues.

Dr. BRANDES. That is right. We are talking about tonnage.

Mr. TREEN. I gather from your statement that you think that the container cargo, the roll-on, roll-off type cargo, would be diverted. That traffic coming through the canal that is subjected to being shipped by vessels to the west coast and then by rail would be more impacted by increased tolls than, say, grain or coal, is that correct?

Dr. BRANDES. That is correct.

Mr. TREEN. Is there anyway for you to quantify that? For example, taking a 50-percent increase in tolls over and above inflation, what would that do to that type of cargo?

Dr. BRANDES. It is very difficult. I do not think our data are such that permit that fine a cut. I could make another guess, but it would be just that, a guess. I do not really have the basis to make that fine a breakdown in total cargo shipments to the gulf coast.

Mr. TREEN. Mr. Lidinsky?

Mr. LIDINSKY. Attached to my statement, I have a one-sheet summary prepared by the Delaware River Port Authority which looks at precisely the question you just posed regarding diverted containerized cargo. This high value cargo listing covers just the North Atlantic port range.

In the 2 years following the two toll increases of this decade, the period from 1975 to 1977 when we had about a 50-percent increase, the North Atlantic ports lost in container tonnage close to 6 millions of cargo.

One cannot say this can all be placed at the door step of canal toll increases, but certainly for a shipper who is offered the alternative of the minibridge, which purports to be a quicker, faster, and safer service, he thinks twice in sending it through the canal.

So here is already a direct impact on our ports which has been measured.

Mr. TREEN. I guess the other side of the question is, if you did not have any increases in your tolls would this movement toward the minibridge, coming across the United States by rail, would that be diminished or are there other factors in driving cargo in that direction which really do not have much relation to tolls?

I guess it is awfully hard to scientifically determine this, is that correct?

Mr. LIDINSKY. It is awfully hard, and it is one of those questions which rests with each individual shipper. When the minibridge was being sold, the one key factor in selling it was that this gave you additional speed in getting your cargo to or from any point in the United States, saving you a couple of weeks on the sea.

We are told by our office in Tokyo that some lines would never use minibridge because of shipping sensitive electronic equipment, and so forth, it is better to use water service, so that they would always use the canal. So, it remains a tough question.

Mr. HUBBARD. I am going to have to ask to recess again for 10 minutes, and this time we will try not to be diverted on the House floor. There is a vote going on and the second bell has rung.

[Whereupon, a short recess was taken.]

Mr. HUBBARD. The subcommittee will now, please, resume.

Congressman Treen?

Mr. TREEN. I think I have a question on the table. I do not know if you recall what it was. The question, I believe, was the effect on the minibridge of various increases in the tolls, and you gave me some response to that. Did you have anything more to add to that?

Dr. BRANDES. No.

Mr. TREEN. All of you are in agreement, apparently, on your proposal that the tolls be limited to 27½ percent increase initially with an 11 percent cap annually thereafter.

That 27 percent increase would be over what period of time? Between now and when?

Mr. LIDINSKY. That would be for the initial increase, whatever period of time it would take for the new Commission to put that into effect. We assume that would be this year.

Mr. TREEN. If it could be put into effect immediately, would you say an 11 percent increase for the first 12 months following that increase would not have an adverse impact?

Mr. LIDINSKY. I would say the 11 percent increase should come after that 12 month period after the 27 percent.

Mr. TREEN. I thought initially, Colonel Haar, that the proposal was that 27½ percent would be the maximum increase between now and the end of 1980.

Colonel HAAR. It was over a 2-year period.

Mr. LIDINSKY. I am sorry if there is confusion. If you put 27 percent in on October 1, 1979, your 12 months for the 11 percent would not start tolling until October 1, 1980. So you have a full year after the 27-percent increase.

Mr. TREEN. And we would get very quickly to the 50 percent total increase that you are talking about, Dr. Brandes, for a 12 percent loss in cargo.

Or are you assuming that that would only be a net increase of, say, 4 or 5 percent after inflation? Is that an assumption you are making? You say a 50 percent increase in tolls would produce an 11.8 percent loss of cargo. We start with 27 percent then we have 11 percent, and we are over your 50 percent in 3 or 4 years.

Dr. BRANDES. Yes, sir, I fully recognize that. I would like to add, irrespective of whether or not such ceiling provisions are adopted, it is my hope that the actual increases that will be sought will be far less than any of those ceilings.

I fully recognize the danger that exists that the toll increases will get very quickly to the level where the loss of traffic will become very damaging.

Mr. TREEN. In fact, I think your study would show that 75 percent toll increase would result in a loss of 20.6 percent of cargo.

Dr. BRANDES. That is right.

Mr. TREEN. You are going to get there very quickly with 27 percent and then annual steps of 11 percent. You are going to be there in about 5 years, less than that.

Mr. LIDINSKY. No. Let me explain about the 11 percent. The 11 percent does not mean that there would be in every 12 month period thereafter an 11 percent increase. What we are saying is that we hope the Commission can go for 3 or 4 years with no increase at all, but that in any given 12-month period, increase requests could not exceed 11 percent.

After the initial increase, we would hope they would not come back for 3 or 4 years.

Mr. **Treen**. I know what you hope. But if we write into this bill that increases shall be held to 11 percent per annum and that is taken advantage of by the Commission, at that rate level then we are going to be very quickly at those toll levels.

I got the impression from the fact that you were supporting this amendment that you could live with the 27 percent and then the 11 percent per annum each year.

Colonel **Haar**. I think that that is the language we have in my enclosure.

Mr. **Treen**. Direct me to that page. Is that attached to your statement?

Colonel **Haar**. That refers to the enclosure to my statement. It is a one-page sheet, and the next to the final item, under the right-hand column under the gulf-Atlantic proposed amendments where it says "tolls" and you will find mention of the 11 percent figure.

We say in there all increases require advance notice and publication of basis and economic justification and detailed consideration per "Long understanding", and we feel that part is very important, and we feel that the "Long understanding" is in the first column in this same enclosure as, the last item.

Mr. **Treen**. I have seen that, and I am going to try to get Senator Long's understanding into our bill.

Colonel **Haar**. We think when that "Long understanding" is applied, if there is not a valid basis for a full economic justification for that 11 percent increase, that it will shake out in the application of the "Long understanding", and then in some cases, only a 6- or 7- percent increase will be justified, even though they are seeking 11 percent.

So we feel that the "Long understanding," along with these other special items, will have to take place, and the language provided will insure that these will be a cap and not an arbitrary automatic 11 percent increase.

Mr. **Treen**. In other words, what you are saying is that you will be severely hurt if they went to the 27-percent increase plus the 11 percent per annum, within several years.

Colonel **Haar**. Yes.

Mr. **Treen**. Do you support that, Dr. Brandes?

Dr. **Brandes**. Yes.

Mr. **Treen**. Under the bill sponsored by the chairman of the full committee, Mr. Murphy, he would include amortization of the net U.S. direct investment. If that is included, generally what effect would that have on trying to restrain tolls? Can you quantify that?

Dr. **Brandes**. According to the statement submitted by Governor Proffit, I understand the difference between full amortization and interest payment versus no interest payment and no amortization is between a 14-percent increase and a 35-percent toll increase. The difference is roughly 20 percent. These are Governor Proffit's figures. I, obviously, have not done the calculations.

Mr. **Treen**. That would have a rather devastating effect, would it not, on the economic viability of our ports?

Dr. **Brandes**. I believe so.

Mr. **Treen**. On the makeup of the Commission, you have recommended that two people be industry oriented out of the five U.S. appointees, and I generally support that.

I would be interested in your reaction to a thought that I had that we require the U.S. appointed members to vote in block. You have got four Panamanian members. They are chosen by the President of the United States, which is kind of an odd situation.

But they are Panamanian nationals, and you have five U.S. members. And if the Panamanians vote in block, which I think they probably will, all they need to do is get one U.S. member to vote with them to have a majority. I have been giving some thought to trying to put in the legislation requirement that the U.S. members first vote among themselves, and based on how they agree on a vote of 3 to 2 that is the way they would have to vote in the Commission meeting. I suppose that might pose some dangers to the other way but not really because of the mathematics of it. Under the proposed legislation all they have to do is get one member to vote with them.

Do you have any comments about that? Would you support it or oppose it?

Colonel HAAR. I think I would support it as long as you had the businessmen included. I think you would have their input and their counsel, and hopefully, they would be able to bring reason and the importance of taking into consideration impacts, diversions, for example, that might result from a given toll increase that is being sought and bring out those factors that the industry would be concerned with, the port industry and their industry, so that the other members of that Commission would be fully informed and will have all of the facts before them before they arrive at a judgment.

And hopefully they will act with a certain amount of good faith and arrive at a proper, reasonable decision.

Mr. TREEN. Just one last question. Any of you who are representing port authorities, were you or any of your colleagues consulted by the Administration at any time with respect to the impact on our ports during the negotiation of the Panama Canal Treaties? Do you recall ever being consulted?

Mr. LIDINSKY. Not at all. In fact, in the midst of the treaties ratification process a speech was given in Baltimore by a State Department representative, which of course supported the treaties, and came up with a very minimum impact prediction on the ports.

As I said in my statement, we were never provided any follow up or copies of how that guess was arrived at, and it was only after formation of our committee that, as far as I am concerned, I was contacted for the first time by the State Department.

Mr. TREEN. I think you testified before the Senate, did you not, Colonel Haar?

Colonel HAAR. Yes. But since the recent treaties were passed the U.S. Ambassador to Panama was recently in New Orleans and did come by to visit with our port director.

Mr. TREEN. After ratification?

Colonel HAAR. After ratification.

Mr. TREEN. I have no other questions, Mr. Chairman.

Thank you, gentlemen.

Mr. HUBBARD. A question for Greg Prior. Of the vessels that call at your port authority facilities in Charleston, S.C., where would most of the cargoes that now come to Charleston be diverted?

Mr. **Prior**. You mean to a minibridge system?

Mr. **Hubbard**. Right.

Mr. **Prior**. Probably to one of the west coast ports, Oakland, Long Beach, or Los Angeles.

Mr. **Hubbard**. And what kinds of commodities would be affected?

Mr. **Prior**. Textiles, machinery. Mostly manufactured goods on the export side. Some types of semifinished textile products.

Mr. **Hubbard**. Thank you.

One question for Mr. Lidinsky. What is the rationale for the exclusion of the article XIII 4(b), payment from the 11 percent per annum ceiling?

Mr. **Lidinsky**. This would go, Mr. Chairman, to Mr. Steers remarks this morning, and also to Congressman Bauman's on the give and take of the treaty overall. We feel that way because of the language of XIII 4(c) is an optional payment of $10 million.

By structuring our amendment around the necessity to comply with 4(b), the fixed annuity payment of $10 million, we would hope tolls would never be raised, even 1 percent, to insure that second $10 million payment of 4(c).

In other words, we would be saying by our amendments is that we do not feel it is right that this country should give 1 cent of that second $10 million and that the tolls should not have to bear that burden.

Mr. **Hubbard**. Thank you.

Colonel Haar, two questions or three. Why do you want to limit the terms of Commission Board members to 4 years?

Colonel **Haar**. That is a personal experience of mine, Mr. Chairman. I felt that board members generally bring a certain vitality and certain drive if they serve a single term.

I have seen a number of boards in my experience where there have been repetitive appointments into advanced years of age where productivity of a commissioner or board member has been less than what it should be in my judgement, and I have always had the feeling that a single term would be in the best interest of all concerned.

It is a personal observation and experience of mine.

Mr. **Hubbard**. Do you want the Board members to be responsive to the President?

Colonel **Haar**. Yes. I think they should be and have to be. They are his appointees.

Mr. **Hubbard**. How did you arrive at the determination of the two classes of persons who should have representations on the Board of the Panama Canal Commission?

Colonel **Haar**. Well, I felt——

Mr. **Hubbard**. You said, am I correct, that two of five persons on the Board from the Atlantic or Gulf area, one engaged in the management or operation of an American-flag steamship line and the other in a major import or export business, depending upon the Panama Canal as its principal transportation route?

Colonel **Haar**. Yes, sir, that is correct.

Mr. **Hubbard**. How did you arrive at that?

Colonel **Haar**. I felt that they, too, were looking at it from the port viewpoint, that they are two categories that are very much involved and have a lot at stake and would probably be able to give the best judgment and have the best insights into what is involved in terms of what is going to be good and proper for our industry and are going to make those judgments that is going to be in the best economic interest of our port industry in our respective regional areas.

Mr. **Hubbard.** I have no other questions of these four helpful witnesses.

Do you have any questions?

Mr. **Tannenbaum.** Yes; I do.

Mr. Prior, I believe you said that the most important element you consider is the congressional oversight, is that correct?

Mr. **Prior.** Yes, sir.

Mr. **Tannenbaum.** And I know that Mr. Lidinsky touched on that question on page 2. I was wondering if that was the feeling of the other two members of the panel that congressional oversight is the most important or certainly one of the most important?

Colonel **Haar.** Yes, sir, I would agree that congressional oversight is all important. I would agree with that.

Dr. **Brandes.** I concur. I believe two of my recommendations have an implicit need for congressional oversight. One is with respect to the organization of the new Commission and a yearly review of its budget.

And the third recommendation is what I call a searching public review of every request for toll increases.

Mr. **Tannenbaum.** What do you consider the next most important issue?

Colonel **Haar.** I think the next most important issue is probably the membership on the Commission of the type we just discussed with the chairman, and if I could go a step further, I would say I would be quite interested in a limitation on the tolls of the type that we have discussed, and also if it were possible, we would be very interested in Mr. Murphy's bill dropping the requirements on interest payments.

Mr. **Tannenbaum.** That poses an interesting question, and I will raise this with Mr. Lidinsky. On page 4 of your statement you say the east coast ports were assured by the State Department that any toll increases would not be harmful.

On page 6 you say:

> We further recognize and accept the fact that canal users and not the American taxpayer should bear the burden of canal operations.

Now, you heard the exchange this morning on the interest payment that it would be bad accounting practice to drop the interest payment. It is a cost. Now, are you just saying generally that the United States should just subsidize the operation?

Mr. **Lidinsky.** No. I would be in favor—and I am speaking personally here—that in Mr. Murphy's bill, if the amortization provision were eliminated and the interest was rebased on a lower figure so that the interest would come out in the neighborhood of $20 million a year, that that would not be too great a burden for users.

What I said on page 6 regarding the burden of operating the canal should fall on the users, I meant the normal day-to-day operations and a repayment of a reasonable interest figure, about $20 million a year.

Mr. TANNENBAUM. Then you favor a $20 million interest payment?

Mr. LIDINSKY. I would think and hope the carriers could live with that if you eliminated the amortization and had a safeguard in there that toll increases were not just going to become rampant to increase revenues to get into the 4(c) the second $10 million.

Mr. TANNENBAUM. Mr. Brandes, in previous testimony before this subcommittee, I believe you testified that there was a lapse period between the institution of a toll and really finding out what that means in terms of effect upon the operations.

Could you describe that in relation to our current situation?

Dr. BRANDES. Yes. The lapse essentially is in finding that the maximum effect of the toll increase will probably not be felt for 5 years or more. Obviously in a 5-year period, many other things will come in to cloud the picture, so to speak. But this does not detract from the logical finding that, because of the nature of foreign trade, where so much is involved with contracts, many of them long-term contracts that require compliance no matter what the circumstances are, that it takes several years before many companies or organizations are in the position to make the kind of alternate arrangements necessary to avoid using the canal.

We also have found that once companies and organizations decide not to use the canal and make investment in alternate facilities, that business is lost to the canal forever. Then these same companies, in fact, have a vested stake in the use of the alternate means.

So there is a great danger in ignoring this long-run effect of toll increases. In the short run it may appear as if it is possible to get away, so to speak, with a large toll increase, but the effects of it may catch up in 5 years time. This still holds true.

This does not mean that all the effects are delayed for 5 years. It really means the maximum effect is delayed for 5 years.

Mr. TANNENBAUM. Have we felt the full effect of the previous toll increase of 1974 and 1976?

Dr. BRANDES. Probably not. It is still going on. We have found, for instance, with respect to coal shipments that the amount of coal shipments that go by the Cape of Good Hope is still increasing, even though the last toll increase was in 1976.

One company does it, and obviously this kind of thing attracts imitators, who want to see whether this can be done. So more people do it. So yes, you do have an increasing effect, and I do not think you have seen the full impact of the 1976 toll increase.

Mr. TANNENBAUM. This leads me into the next question, and that is earlier you talked about some of the encouraging items to replace the Alaskan oil such as the grain shipments and increased trade with China.

Are there any discouraging items such, as you point out, as the coal loss or any other items like that that you find reflect adversely?

Dr. BRANDES. Well there have been some minor losses; for instance, intercoastal trade between the east coast and the west coast of the United States which has been virtually eliminated other than the petroleum shipments from Alaska. This used to be a very thriving business involving the shipments of lumber from our west coast to the east coast, and the shipment of steel products from the east coast to the west coast.

The last few ships that were involved in this trade have ceased operations. There is always a process of change going on for a variety of reasons, some of it related to tolls.

I believe that tolls probably played a part in the eclipse of intercoastal trade, but there were other factors as well.

Mr. TANNENBAUM. Are you optimistic or pessimistic as to the ability of the canal to operate on a self-sustaining basis, assuming all proper costs are chargeable to the canal operation?

Dr. BRANDES. I am optimistic, provided that the Canal Commission is organized in such a way that it can take advantage of the commercial opportunities that exist. I believe, as has been well demonstrated during the past few years that the Panama Canal is actually in a competitive business.

It used to be thought of as a monopoly. It is not a monopoly any more, because obviously with these alternatives there are other ways of satisfying the buyers and sellers involved.

If the new Canal Commission realizes it is in the competitive business and begins to behave like a competitive business, I think there is room for optimism. The basic reason for this is that the foreign trade of the United States is expanding quite rapidly, not just in imports, but in exports as well.

The canal can continue to play a very vital role in this, but I feel there must be a change with respect to the management of this business. Being in a competitive business, the managers of the new Commission must recognize that they have to go out and sell themselves.

Traditionally, I think the company has been ready to accept any ship that came to the canal and give the ship a transit. But nobody was prepared to go out and dig up new business, so to speak. I think this probably will have to change. The Canal Commission should engage in marketing like any other organization that is engaged in a competitive enterprise.

Mr. LIDINSKY. Can I add that since the 1976 toll increase there is a legal-regulatory reality now present which greatly adds to the sensitivity question, and that is that the Federal Maritime Commission has finally resolved the legality of the minibridge and declared that service legal.

That opinion was not appealed to the higher courts so that stands, and there also has been a great increase in a new service concept at the Federal Maritime Commission called microbridge, which is even a more direct and greater threat to east and gulf ports than the minibridge.

So these two factors are now present, and they are going to be very important in the toll increase sensitivity area.

Mr. TANNENBAUM. Colonel Haar, you studied the economic impact of the Panama Canal shipments as it affects each State. Could we have a copy of that?

Colonel HAAR. Yes, sir, I will be happy to make that available for your record.

[The following material was submitted for the record:]

TABLE NO. 1
ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS
LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL &
SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL	66,503,331	2,926146564	4,681834555	110,838
STATE OF LOAD/DISCHARGE				
ALABAMA	3,755,500	165,242,000	264,387,223	6,259
CONNECTICUT	201,972	8,886,768	14,218,829	336
DELAWARE	69,955	3,078,020	4,924,832	116
FLORIDA	4,454,542	195,999,848	313,599,801	7,424
GEORGIA	906,309	39,877,596	63,804,229	1,510
LOUISIANA	19,610,880	862,878,720	1,380605978	32,684
MAINE	27,261	1,199,484	1,919,214	45
MARYLAND	5,456,253	240,075,132	384,120,245	9,093
MASSACHUSETTS	816,356	35,919,664	57,471,481	1,360
MISSISSIPPI	1,185,161	52,147,084	83,435,377	1,975
NEW HAMPSHIRE	90,250	3,971,000	6,353,630	150
NEW YORK/NEW JERSEY	4,670,044	205,481,936	328,771,142	7,783
NORTH CAROLINA	444,505	19,558,220	31,293,217	740
PENNSYLVANIA	2,422,389	106,585,116	170,536,24	4,037
RHODE ISLAND	143,810	6,327,640	10,124,259	239
SOUTH CAROLINA	723,710	31,843,240	50,949,184	1,206
TEXAS	10,642,509	468,270,396	749,232,67	17,737
VIRGINIA	10,881,916	478,804,304	766,086,914	18,136

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS

STATE OF LOAD/DISCHARGE: ALABAMA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL	3,755,500	165,242,000	264,387,223	6,259
MEXICO	129,071	5,679,124	9,086,644	215
GUATMEALA	413	18,172	29,100	0
EL SALVADOR	7,367	324,148	518,666	12
NICARAGUA	78	3,432	5,549	0
CANAL ZONE	314	13,816	22,160	0
COLOMBIA	2,767	121,748	194,855	4
ECUADOR	2,613	114,972	183,956	4
PERU	687,203	30,236,932	48,379,112	1,145
CHILE	503,251	22,143,044	35,428,894	838
THAILAND	1,887	83,028	132,857	3
MALAYSIA	37,683	1,658,052	2,652,915	62
SINGAPORE	23,742	1,044,648	1,671,442	39
INDONESIA	35,073	1,543,212	2,469,172	58
PHILIPPINES	58,308	2,565,552	4,104,937	97
KOREA, REP. OF	78,319	3,446,036	5,513,708	130
HONG KONG	5,136	225,984	361,591	8
REPUBLIC OF CHINA	78,767	3,465,748	5,545,262	131
JAPAN	1,813,470	79,792,680	127,668,310	3,022
AUSTRALIA	284,389	12,513,116	20,021,052	473
NEW ZEALAND	5,638	248,072	396,942	9

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: CONNECTICUT

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	201,972	8,886,768	14,218,849	336
ECUADOR..................	11,231	494,164	790,684	18
PERU.....................	2,191	96,404	154,255	3
CHILE....................	28,572	1,257,168	2,011,495	47
THAILAND.................	45	1,980	3,178	0
MALAYSIA.................	221	9,724	15,589	0
PHILIPPINES..............	35,891	1,579,204	2,526,744	59
PEOPLES REP. OF CHINA....	10	440	724	0
KOREA, REP. OF...........	33,614	1,479,016	2,366,470	56
JAPAN....................	90,194	3,968,536	6,349,705	150

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: DELAWARE

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	69,955	3,078,020	4,924,893	116
MEXICO...................	14,001	616,044	985,670	23
PANAMA...................	1,983	87,252	139,668	3
PERU.....................	766	33,704	53,979	1
CHILE....................	4,173	183,612	293,808	6
KOREA, REP. OF...........	20,340	894,960	1,431,961	33
HONG KONG................	21	924	1,497	0
REPUBLIC OF CHINA........	22	968	1,610	0
JAPAN....................	7,691	338,404	541,515	12
AUSTRALIA................	20,737	912,428	1,459,937	34
NEW ZEALAND..............	216	9,504	15,243	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: FLORIDA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	4,454,542	195,999,848	313,599,801	7,424
MEXICO...................	26,915	1,184,260	1,894,866	44
GUATMEALA................	1,636	71,984	115,241	2
EL SALVADOR..............	50,172	2,207,568	3,532,165	83
HONDURAS.................	4	176	339	0
NICARAGUA................	33,568	1,476,992	2,363,239	55
COSTA RICA...............	35,488	1,561,472	2,498,407	59
PANAMA...................	1,913	84,172	134,681	3
CANAL ZONE...............	763	33,572	53,716	1
COLOMBIA.................	14,537	639,628	1,023,431	24
ECUADOR..................	184,394	8,113,336	12,981,364	307
PERU.....................	69,897	3,075,468	4,920,748	116
CHILE....................	71,766	3,157,704	5,052,375	119
THAILAND.................	65,571	2,885,124	4,616,203	109
MALAYSIA.................	9,615	423,060	676,953	16
SINGAPORE................	74,234	3,266,296	5,226,099	123
INDONESIA................	36,695	1,614,580	2,583,358	61
PHILIPPINES..............	127,743	5,620,692	8,993,143	212
MACAO....................	6	264	445	0
PEOPLES REP. OF CHINA...	275	12,100	19,400	0
KOREA, REP. OF...........	1,283,748	56,484,912	90,375,899	2,139
HONG KONG................	5,532	243,408	389,474	9
REPUBLIC OF CHINA.......	57,671	2,537,524	4,060,093	96
JAPAN....................	2,247,543	98,891,892	158,227,092	3,745
AUSTRALIA................	48,661	2,141,084	3,425,804	81
PAPUA NEW GUINEA........	0	0	39	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: FLORIDA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
NEW ZEALAND.............	6,162	271,128	433,848	10
BRITISH PAC. ISL........	16	704	1,162	0
TRUST TERR. OF PAC. ISL.	2	88	203	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS
LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL &
SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: GEORGIA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL	906,309	39,877,596	63,804,220	1,510
MEXICO	13	572	922	0
EL SALVADOR	123	5,412	8,717	0
NICARAGUA	9,152	402,688	644,334	15
COSTA RICA	12,750	561,000	897,640	21
PANAMA	18,227	801,988	1,283,185	30
CANAL ZONE	1,237	54,428	87,086	2
COLOMBIA	8,512	374,528	599,246	14
ECUADOR	14,621	643,324	1,029,328	24
PERU	15,710	691,240	1,106,005	26
CHILE	3,198	140,712	225,148	5
THAILAND	8,161	359,084	574,572	13
MALAYSIA	13,209	581,196	929,925	22
SINGAPORE	6,828	300,432	480,692	11
INDONESIA	1,175	51,700	82,733	1
PHILIPPINES	44,421	1,954,524	3,127,262	74
MACAO	11	484	805	0
PEOPLES REP. OF CHINA	10,161	447,084	715,387	16
KOREA, REP. OF	55,775	2,454,100	3,926,614	92
HONG KONG	18,497	813,868	1,302,258	30
REPUBLIC OF CHINA	29,162	1,283,128	2,053,029	48
JAPAN	591,759	26,037,396	41,659,867	986
AUSTRALIA	42,195	1,856,580	2,970,542	70
NEW ZEALAND	1,403	61,732	98,835	2

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: LOUISIANA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL..................	19,610,880	862,878,720	1,380605978	32,684
MEXICO.................	522,720	22,999,680	36,799,491	871
GUATMEALA..............	38,570	1,697,080	2,715,378	64
EL SALVADOR............	367,777	16,182,188	25,891,566	612
HONDURAS...............	0	0	9	0
NICARAGUA..............	162,374	7,144,456	11,431,183	270
COSTA RICA.............	89,751	3,949,044	6,318,500	149
PANAMA.................	131,867	5,802,148	9,283,441	219
CANAL ZONE.............	75,918	3,340,392	5,344,628	126
COLOMBIA...............	122,300	5,381,200	8,609,965	203
ECUADOR................	161,253	7,095,132	11,352,264	268
PERU...................	566,662	24,933,128	39,893,036	944
CHILE..................	269,948	11,877,712	19,004,368	449
THAILAND...............	266,190	11,712,360	18,739,840	443
MALAYSIA...............	201,453	8,863,932	14,182,340	335
SINGAPORE..............	158,196	6,960,624	11,137,030	263
INDONESIA..............	404,061	17,778,684	28,445,936	673
PHILIPPINES............	769,582	33,861,608	54,178,640	1,282
SOUTHERN ASIA, N.E.C....	22	968	1,602	0
PEOPLES REP. OF CHINA...	86,749	3,816,956	6,107,129	144
KOREA, REP. OF.........	918,499	40,413,956	64,662,332	1,530
HONG KONG..............	8,902	391,688	626,714	14
REPUBLIC OF CHINA.......	1,592,193	70,056,492	112,090,436	2,653
JAPAN..................	11,682,593	514,034,092	822,454,573	19,470
AUSTRALIA..............	912,610	40,154,840	64,247,770	1,521
PAPUA NEW GUINEA........	2,839	124,916	199,927	4

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: LOUISIANA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
NEW ZEALAND.............	70,256	3,091,264	4,946,067	117
FRENCH PAC. ISL.........	7,833	344,652	551,473	13
TRUST TERR. OF PAC. ISL.	556	24,464	39,154	0
OTHER PAC ISL, N.E.C....	19,192	844,448	1,351,171	31

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: MAINE

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL..................	27,261	1,199,484	1,919,214	45
COLOMBIA...............	2,066	90,904	145,458	3
ECUADOR................	0	0	6	0
CHILE..................	2,637	116,028	185,666	4
THAILAND...............	15,115	665,060	1,064,111	25
SINGAPORE..............	448	19,712	31,573	0
PHILIPPINES............	32	1,408	2,286	0
HONG KONG..............	0	0	30	0
REPUBLIC OF CHINA.......	533	23,452	37,566	0
JAPAN..................	576	25,344	40,593	0
AUSTRALIA..............	5,304	233,376	373,429	8
NEW ZEALAND............	546	24,024	38,493	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: MARYLAND

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL..................	5,456,253	240,075,132	384,120,243	9,093
MEXICO..................	110,527	4,863,188	7,781,163	184
EL SALVADOR.............	224	9,856	15,808	0
NICARAGUA...............	997	43,868	70,214	1
COSTA RICA..............	9,451	415,844	665,365	15
PANAMA..................	7,972	350,768	561,298	13
CANAL ZONE..............	5,148	226,512	362,461	8
COLOMBIA................	21,629	951,676	1,522,721	36
ECUADOR.................	21,927	964,788	1,543,676	36
PERU....................	73,913	3,252,172	5,203,534	123
CHILE...................	117,721	5,179,724	8,287,620	196
THAILAND................	37,836	1,664,784	2,663,711	63
MALAYSIA................	30,969	1,362,636	2,180,243	51
SINGAPORE...............	23,006	1,012,264	1,619,665	38
INDONESIA...............	49,322	2,170,168	3,472,296	82
PHILIPPINES.............	149,930	6,596,920	10,555,125	249
MACAO...................	33	1,452	2,357	0
PEOPLES REP. OF CHINA...	988	43,472	69,559	1
KOREA, REP. OF..........	273,500	12,034,000	19,254,464	455
HONG KONG...............	38,509	1,694,396	2,711,054	64
REPUBLIC OF CHINA.......	287,525	12,651,100	20,241,828	479
JAPAN...................	3,729,633	164,103,852	262,566,228	6,216
AUSTRALIA...............	391,436	17,223,184	27,557,144	652
NEW ZEALAND.............	4,231	186,164	297,912	7
FRENCH PAC. ISL.........	39,907	1,755,908	2,809,466	66
TRUST TERR. OF PAC. ISL.	29,905	1,315,820	2,105,327	49

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: MASSACHUSETTS

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	816,356	35,919,664	57,471,481	1,360
MEXICO...................	207,077	9,137,788	14,620,520	346
EL SALVADOR..............	20,230	890,120	1,424,234	33
COSTA RICA...............	23,253	1,023,132	1,637,057	38
CANAL ZONE...............	6	264	435	0
ECUADOR..................	54	2,376	3,824	0
PERU.....................	6,617	291,148	465,891	11
CHILE....................	26,224	1,153,856	1,846,223	43
THAILAND.................	2,918	128,392	205,485	4
MALAYSIA.................	1,180	51,920	83,127	1
SINGAPORE................	349	15,356	24,628	0
INDONESIA................	16	704	1,194	0
PHILIPPINES..............	223,115	9,817,060	15,707,333	371
MACAO....................	5	220	379	0
PEOPLES REP. OF CHINA...	662	29,128	46,660	1
KOREA, REP. OF...........	113,196	4,980,624	7,969,048	188
HONG KONG................	4,036	177,584	284,160	6
REPUBLIC OF CHINA.......	9,649	424,556	679,342	16
JAPAN....................	124,490	5,477,560	8,764,165	207
AUSTRALIA................	36,585	1,609,740	2,575,614	60
PAPUA NEW GUINEA........	0	0	37	0
NEW ZEALAND..............	16,072	707,168	1,131,515	26
FRENCH PAC. ISL.........	8	352	601	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: MISSISSIPPI

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	1,185,161	52,147,084	83,435,377	1,975
MEXICO...................	4,942	217,448	347,973	8
EL SALVADOR..............	16,435	723,140	1,157,039	27
PANAMA...................	1,065	46,860	74,980	1
ECUADOR..................	147,895	6,507,380	10,411,871	246
PERU.....................	7,019	308,836	494,141	11
CHILE....................	17,783	782,452	1,251,961	29
THAILAND.................	70,527	3,103,188	4,965,128	117
MALAYSIA.................	61	2,684	4,304	0
SINGAPORE................	1,281	56,364	90,184	2
INDONESIA................	1,166	51,304	82,138	1
PHILIPPINES..............	24,866	1,094,104	1,750,623	41
PEOPLES REP. OF CHINA....	30,741	1,352,604	2,164,224	51
KOREA, REP. OF...........	32,244	1,418,736	2,270,011	53
HONG KONG................	24	1,056	1,739	0
REPUBLIC OF CHINA........	67,187	2,956,228	4,730,019	111
JAPAN....................	760,303	33,453,332	53,525,373	1,267
NEW ZEALAND..............	1,613	70,972	113,610	2

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL & SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: NEW HAMPSHIRE

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL..................	90,250	3,971,000	6,353,630	150
MEXICO..................	41,504	1,826,176	2,921,934	69
CHILE..................	48,745	2,144,780	3,431,696	81

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

ECONOMIC IMPACT OF WATERBORNE SHIPMENTS VIA PANAMA CANAL
FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

NOTE: PANAMA CANAL SHIPMENTS DEFINED AS ALL CARGOS
LOADED & DISCHARGED ON WEST COASTS OF MEXICO, CENTRAL &
SOUTH AMERICA, FAR EAST, AUSTRAILIA, & OCEANIA

DIRECT IMPACT = $44 PER LONG TON
TOTAL IMPACT = 1.6 TIMES DIRECT IMPACT
EMPLOYMENT = 1 JOB PER 600 LONG TONS

NEW YORK/NEW JERSEY

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	4,670,044	205,481,936	328,771,142	7,783
MEXICO...................	26,108	1,148,752	1,838,038	43
GUATEMALA................	704	30,976	49,528	1
EL SALVADOR..............	64,767	2,849,748	4,559,647	107
HONDURAS.................	25	1,100	1,764	0
NICARAGUA................	30,781	1,354,364	2,167,013	51
COSTA RICA...............	69,569	3,061,036	4,897,670	115
PANAMA...................	83,874	3,690,456	5,904,773	139
CANAL ZONE...............	33,993	1,495,692	2,393,166	56
COLOMBIA.................	76,641	3,372,204	5,395,562	127
ECUADOR..................	278,668	12,261,392	19,618,232	464
PERU.....................	114,686	5,046,184	8,073,944	191
CHILE....................	114,247	5,026,868	8,043,054	190
THAILAND.................	90,656	3,988,864	6,382,230	151
CAMBODIA.................	0	0	5	0
MALAYSIA.................	109,907	4,835,908	7,737,487	183
SINGAPORE................	82,643	3,636,292	5,818,106	137
INDONESIA................	161,701	7,114,844	11,383,790	269
BRUNEI...................	11	484	795	0
PHILIPPINES..............	455,869	20,058,236	32,093,188	759
MACAO....................	237	10,428	16,718	0
SOUTHERN ASIA, N.E.C.....	0	0	7	0
PEOPLES REP. OF CHINA....	9,264	407,616	652,233	15
NORTH KOREA..............	16	704	1,174	0
KOREA, REP. OF...........	477,529	21,011,276	33,618,086	795
HONG KONG................	216,433	9,523,052	15,236,891	360

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-CONTINUED

NEW YORK/NEW JERSEY

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
REPUBLIC OF CHINA.......	390,567	17,184,948	27,495,925	650
JAPAN..................	1,303,903	57,371,732	91,794,826	2,173
AUSTRALIA..............	385,026	16,941,144	27,105,833	641
PAPUA NEW GUINEA........	24	1,056	1,740	0
NEW ZEALAND............	89,659	3,944,996	6,312,023	149
WESTERN SAMOA...........	6	264	445	0
BRITISH PAC. ISL........	40	1,760	2,818	0
FRENCH PAC. ISL.........	332	14,608	23,439	0
TRUST TERR. OF PAC. ISL.	2,093	92,092	147,415	3
OTHER PAC ISL, N.E.C....	41	1,804	2,942	0

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: NORTH CAROLINA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	444,505	19,558,220	31,293,217	740
NICARAGUA................	3,320	146,080	233,778	5
PANAMA...................	2,796	123,024	196,841	4
COLOMBIA.................	6,922	304,568	487,328	11
ECUADOR..................	511	22,484	36,030	0
PERU.....................	60,868	2,678,192	4,285,155	101
CHILE....................	101,313	4,457,772	7,132,472	168
THAILAND.................	8,093	356,092	569,792	13
MALAYSIA.................	249	10,956	17,543	0
SINGAPORE................	31	3,564	5,762	0
INDONESIA................	17,470	763,680	1,229,921	29
PHILIPPINES..............	12,125	533,500	853,620	20
PEOPLES REP. OF CHINA...	84	3,696	5,908	0
KOREA, REP. OF..........	36,537	1,607,628	2,572,220	60
HONG KONG...............	928	40,832	65,385	1
REPUBLIC OF CHINA.......	14,864	654,016	1,046,452	24
JAPAN...................	176,062	7,746,728	12,394,814	293
AUSTRALIA...............	2,156	94,864	151,805	3
NEW ZEALAND.............	118	5,192	8,324	0

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: PENNSYLVANIA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	2,422,389	106,585,116	170,536,248	4,037
MEXICO...................	1	44	78	0
EL SALVADOR..............	12,599	554,356	887,026	20
NICARAGUA................	18,955	834,020	1,334,457	31
COSTA RICA...............	41	1,804	2,933	0
PANAMA...................	3,461	152,284	243,680	5
CANAL ZONE...............	2,140	94,160	150,682	3
COLOMBIA.................	5,648	248,512	397,668	9
ECUADOR..................	55,294	2,432,936	3,892,757	92
PERU.....................	416,439	18,323,316	29,317,329	694
CHILE....................	51,180	2,251,920	3,603,081	85
THAILAND.................	25,355	1,115,620	1,785,046	42
MALAYSIA.................	2,506	110,264	176,450	4
SINGAPORE................	5,988	263,472	421,619	9
INDONESIA................	14,042	617,848	988,559	23
BRUNEI...................	9	396	646	0
PHILIPPINES..............	187,631	8,255,764	13,209,239	312
MACAO....................	2	88	186	0
PEOPLES REP. OF CHINA...	1,856	81,664	130,708	3
KOREA, REP. OF..........	195,584	8,605,696	13,769,114	325
HONG KONG................	12,284	540,496	864,794	20
REPUBLIC OF CHINA.......	128,205	5,641,020	9,025,700	213
JAPAN....................	949,689	41,786,316	66,858,141	1,582
AUSTRALIA................	272,395	11,985,380	19,176,635	453
PAPUA NEW GUINEA........	1,731	76,164	121,868	2
NEW ZEALAND..............	59,339	2,610,916	4,177,499	98

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STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

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FOR ATLANTIC & GULF COAST PORTS GROUPED BY STATE

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: PENNSYLVANIA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
FRENCH PAC. ISL.........	0	0	22	0
OTHER PAC ISL, N.E.C....	4	176	317	0

SEE FOOTNOTES AT END OF TABLE.

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STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: RHODE ISLAND

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	143,810	6,327,640	10,124,250	239
PERU.....................	1,047	46,068	73,742	1
KOREA, REP. OF...........	33,196	1,460,624	2,337,022	55
REPUBLIC OF CHINA.......	17,784	782,496	1,252,021	29
JAPAN....................	91,782	4,038,408	6,461,463	152

SEE FOOTNOTES AT END OF TABLE.

TABLE NO. 2
STATE SUMMARY ANALYSIS BY COUNTRY OF LOAD/DISCHARGE

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: SOUTH CAROLINA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL....................	723,710	31,843,240	50,949,185	1,206
GUATMEALA...............	18	792	1,296	0
EL SALVADOR.............	26	1,144	1,846	0
COSTA RICA..............	19,851	873,444	1,397,542	33
PANAMA..................	16,507	726,308	1,162,132	27
CANAL ZONE..............	222	9,768	15,630	0
COLOMBIA................	8,790	386,760	618,870	14
ECUADOR.................	45,604	2,006,576	3,210,546	76
PERU....................	42,601	1,874,444	2,999,142	71
CHILE...................	47,683	2,098,052	3,356,891	79
THAILAND................	4,424	194,656	311,509	7
MALAYSIA................	2,897	127,468	203,985	4
SINGAPORE...............	20,642	908,248	1,453,259	34
INDONESIA...............	4,359	191,796	306,943	7
PHILIPPINES.............	50,909	2,239,996	3,584,033	84
MACAO...................	13	572	962	0
PEOPLES REP. OF CHINA...	7,881	346,764	554,839	13
KOREA, REP. OF..........	88,101	3,876,444	6,202,340	146
HONG KONG...............	50,088	2,203,872	3,526,263	83
REPUBLIC OF CHINA.......	118,414	5,210,216	8,336,360	197
JAPAN...................	123,534	5,435,496	8,696,832	205
AUSTRALIA...............	55,233	2,430,252	3,888,408	92
PAPUA NEW GUINEA........	3	132	242	0
NEW ZEALAND.............	15,885	698,940	1,118,336	26

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-CONTINUED

STATE OF LOAD/DISCHARGE: TEXAS

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL	10,642,509	468,270,396	749,232,678	17,737
MEXICO	224,094	9,860,136	15,776,229	373
GUATMEALA	60,746	2,672,824	4,276,573	101
EL SALVADOR	109,493	4,817,692	7,708,313	182
HONDURAS	0	0	33	0
NICARAGUA	67,217	2,957,548	4,732,099	112
COSTA RICA	52,688	2,318,272	3,709,298	87
PANAMA	24,952	1,097,888	1,756,649	41
CANAL ZONE	36,497	1,605,868	2,569,404	60
COLOMBIA	249,643	10,984,292	17,574,904	416
ECUADOR	356,913	15,704,172	25,126,690	594
PERU	709,699	31,226,756	49,962,840	1,182
CHILE	373,036	16,413,584	26,261,775	621
THAILAND	109,677	4,825,788	7,721,301	182
MALAYSIA	37,319	1,642,036	2,627,261	62
SINGAPORE	133,862	5,889,928	9,423,953	223
INDONESIA	290,215	12,769,460	20,431,190	483
BRUNEI	14	616	1,030	0
PHILIPPINES	196,732	8,656,208	13,849,996	327
PEOPLES REP. OF CHINA	3,040	133,760	214,045	5
KOREA, REP. OF	491,503	21,626,132	34,601,846	819
HONG KONG	79,863	3,513,972	5,622,399	133
REPUBLIC OF CHINA	266,428	11,722,832	18,756,597	444
JAPAN	5,821,330	256,138,520	409,821,678	9,702
AUSTRALIA	866,050	38,106,200	60,969,920	1,443
PAPUA NEW GUINEA	519	22,836	36,557	0

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: TEXAS

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
NEW ZEALAND............	67,757	2,981,308	4,770,125	112
BRITISH PAC. ISL........	1	44	107	0
FRENCH PAC. ISL.........	7	308	507	0
TRUST TERR. OF PAC. ISL.	4	176	294	0
OTHER PAC ISL, N.E.C....	13,196	580,624	929,049	21

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EMPLOYMENT = 1 JOB PER 600 LONG TONS
-CONTINUED

STATE OF LOAD/DISCHARGE: VIRGINIA

	LONG TONS	DIRECT IMPACT	TOTAL IMPACT	EMPLOYMENT IMPACT
TOTAL	10,881,916	478,804,304	766,086,914	18,136
MEXICO	330,010	14,520,440	23,232,736	550
GUATMEALA	36	1,584	2,600	0
EL SALVADOR	18,163	799,172	1,278,723	30
PANAMA	899	39,556	63,307	1
CANAL ZONE	2,405	105,820	169,347	4
COLOMBIA	473	20,812	33,364	0
ECUADOR	2,690	118,360	189,430	4
PERU	8,552	376,288	602,062	14
CHILE	278,175	12,239,700	19,583,539	463
THAILAND	40,903	1,799,732	2,879,578	68
MALAYSIA	77,965	3,430,460	5,486,803	129
SINGAPORE	76,692	3,374,448	5,399,145	127
INDONESIA	157,802	6,943,288	11,109,305	263
PHILIPPINES	60,408	2,657,952	4,252,740	100
PEOPLES REP. OF CHINA	889	39,116	62,649	1
KOREA, REP. OF	690,834	30,396,696	48,634,743	1,151
HONG KONG	6,880	302,720	484,404	11
REPUBLIC OF CHINA	111,784	4,918,496	7,869,635	186
JAPAN	8,874,795	390,490,980	624,785,613	14,791
AUSTRALIA	96,342	4,239,048	6,782,536	160
NEW ZEALAND	45,199	1,988,756	3,182,077	75
TRUST TERR. OF PAC. ISL.	1	44	90	0
OTHER PAC ISL, N.E.C.	2	88	170	0

Mr. **Whitman**. I have one short question. I know in the past you have stressed the importance of using the disaggregated approach for use in your forecast of traffic and sensitivity of traffic to toll increases.

Is it still your opinion that this is the better way to do it or the only way to do it?

Dr. **Brandes**. My opinion is that it is the best way to do it. I might wish to explain for the record that the disaggregated approach involves analyzing separately the various commodities and commodity movements instead of trying to do one total analysis for all Panama Canal traffic in one lump. We have traditionally sought to analyze the traffic in terms of specific commodities and specific commodity movements, because there really is no logical link between these various commodity movements except that they happen to pass by the same street corner, so to speak, called the Panama Canal. Since there is nothing that logically connects these movements, there is no valid reason for trying to think that they will all behave in exactly the same way.

This, in essence, was our justification for trying to analyze these various segments separately, and I believe this justification still holds.

Mr. **Whitman**. Thank you, Mr. Chairman.

Mr. **Hubbard**. Thank you, counsel for the majority.

Now, counsel for the minority, Mr. Kenneth Merin.

Mr. **Merin**. You gentlemen are here today representing the gulf ports and the coastal ports. Would you say there is a substantial identity of interest between your own ports and the west coast ports?

Colonel **Haar**. I would like, in that regard, to answer in two ways. First, you have received from the American Association of Port Authorities a statement for the record which enclosed the position of the entire port industry nationwide in the form of a standing resolution, and I have a copy of that here.

[The following was submitted for the record:]

The American Association of Port Authorities,
February 20, 1979.

Hon. John M. Murphy,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Longworth Building, Washington, D.C.

Dear Congressman Murphy: We are aware of the hearings being held by your Committee on the Panama Canal situation. I transmit herewith, for your hearing record, a copy of Resolution No. E-28—Urging Toll Levels That Will Not Interfere with Maximizing Use of the Panama Canal.

This resolution represents the position of the American Association of Port Authorities on this subject as adopted at its Convention in September 1978. We commend it to the attention of you and your Committee.

Sincerely,

Melvin Shore,
Chairman, U.S. National Transportation Policy Committee.

[No. E-28]

URGING TOLL LEVELS THAT WILL NOT INTERFERE WITH MAXIMIZING USE OF PANAMA CANAL

Whereas, continued economically feasible access to the Panama Canal by vessels engaged in international trade is of vital importance to the continued welfare of the ports of the United States; and

Whereas, the level of the Panama Canal tolls imposed directly affects the frequency of use by such vessels; and

Whereas, a stable and predictable level of tolls is essential to encourage the maximum use of the Panama Canal and to prevent a decrease in the frequency of the use thereof.

Now, therefore be it resolved, that the American Association of Port Authorities, in view of the importance of the continued maximum use of the Panama Canal by vessels engaged in the international trade to the economics of the ports of the United States, supports the establishing and controlling of present and future tolls for the use thereof at a stable and predictable level which will not decrease the use thereof; and

Be it further resolved, that the Executive Vice President and the Chairman of the Committee on U.S. National Transportation Policy be and they hereby are authorized to take whatever steps are necessary to carry out the purposes of this resolution.

(Unanimously passed)

Mr. HAAR. It was transmitted to you over the signature of Mel Shore, who is the port director at Sacramento, Calif., who is also the chairman of the American Association of Port Authorities, U.S. National Transportation Policy Committee, a committee that has responsibility in this area for that particular standing resolution.

And I might just read one small sentence in that resolution which says, speaking for AAPA, "supports the establishing and controlling of present and future tolls for the use thereof at a stable and predictable level which will not decrease the use thereof."

I think that is the essence of that position. So that represents the standing resolution passed by the entire membership of the American Association of Port Authorities, which a California port director did transmit to you for inclusion in the record of this hearing today.

However, that notwithstanding, I think some of the California ports are starting to probably count their chickens, we think, before they hatch. We know that Oakland and Los Angeles from newpaper reports that have been published have developed estimates as to what potential increase in business they may receive as a result of increasing tolls and diversion of traffic.

There is substantial tonnage involved. In fact, they are even getting into some capital programs where they are planning to increase their facilities to take advantage of this new business that they expect to receive.

So I think that question should be answered in the two ways that I have addressed it.

Mr. MERIN. Do you know if the rail industry has made any projections as to how their operations might be affected by minibridge?

Mr. LIDINSKY. There is a letter, which I did not make part of my statement, but I can provide it for the record, which I believe was from the American Association of Railroads, written last year to the Senate in which this was precisely the question.

[The following was received for the record:]

Association of American Railroads,
Washington, D.C., August 17, 1977.

Hon. Ralph H. Metcalfe,
Subcommittee on the Panama Canal, Committee on Merchant Marine and Fisheries, the House of Representatives, Washington, D.C.

Dear Sir: Thank you your invitation to testify on the vital interests of the United States in the Panama Canal during the hearings held by your subcommittee on July 25–27, 1977. Unfortunately, as I explained to Coleman Comroy of your staff, I was committed to be away from Washington throughout that period. Under those circumstances, I appreciate the opportunity to transmit my comments on certain questions relating to the railroad industry.

Among the questions concerning the economic interests of the United States in the Panama Canal that you submitted to members of Panel No. 2, questions Nos. 3, 13, and 14 addressed the issue of alternative transportation facilities that may exist. In general, the railroads of the United States appear capable of satisfying the transport demands that would be placed on them by a temporary or a permanent closing of the Panama Canal.

American railroads have, in fact, already diverted substantial amounts of traffic that would at one time have moved through the Canal. The development of containerization as a technique for transferring cargo swiftly and economically from ship to rail and from rail to ship has given particular impetus to this shift of cargo from all-water routes utilizing the Canal to joint land-water routes.

These joint rail-water operations have proven themselves capable of serving all kinds of international traffic that would otherwise employ the Panama Canal. "Mini-bridge" is the name that has been given to container operations that employ a transcontinental rail movement in preference to transiting the Canal in moving U.S. imports or exports between the West Coast of the U.S. and Europe, Africa and the Near East or between the East Coast of the U.S. and the Orient. Even containerized cargoes moving between Europe and the Orient are being diverted from the Canal to rail movement across North America. Such operations have come to be known as "land-bridge."

In many instances the service provided by mini-bridge and land-bridge is actually superior to that provided on all-water, trans-Canal routes, and the total cost to the shipper, lower. For example, cargo from Europe to a Pacific Coast port that takes 19 days by containership through the Canal requires only 13 days going from Europe to an Atlantic port, thence by rail to a Pacific Coast destination. It commonly takes a containership 23–31 days to travel from an East Coast port to Japan by the Canal, versus only 17 days via mini-bridge, a 6-to-14-day saving. Such time savings mean not only better service for shippers but lower costs as well. Even if mini-bridge rates roughly equal all-water rates, as they frequently do, the shorter transit times reduce the inventory cost of goods tied up in transit and loss, damage and pilferage of those goods as well. Mini-bridge can also benefit ship owners through improved utilization of expensive vessels. For example, a ship from the Orient can unload on the West Coast, reload and return to the Orient in roughly the same time that it would take to use the all-water route via the Canal just to get to the East Coast.

Use of mini-bridge also results in fuel savings. Joint rail-water service between the U.S. East Coast and Japan actually uses fewer BTU's per ton than all-water service between the same points, since the mini-bridge route is some 2,800 miles shorter. Considering the large circuitry inherent in most water movements, the railroads use less energy than any other general freight mode as substantiated in a study supported by the National Science Foundation.

It is cost and service advantages such as these that have already diverted many cargoes from all-water routes using the Canal to rail routes across the U.S. This trend away from the Canal should be of particular interest to the subcommittee in assessing the impact of closing the Canal, for the diversion has occurred voluntarily—not because the Canal route is unavailable, but because the joint water-rail route is preferable.

Unfortunately, available data do not permit quantification of the extent to which mini-bridge and land-bridge arrangements have already diverted international cargoes from the Canal, but there are indications that they are appealing to substantial volumes of traffic. The U.S. railroads' container traffic, most of which is import and export cargo, is a fast-growing category in total railroad piggyback traffic which itself has experienced a 23 percent gain in the fast five years. Conversely, total tonnage of oceangoing cargo moving through the Canal fell from a record level of 150 million long tons achieved in 1974 to 141 million tons in 1975 and only 117 million tons in 1976. Traffic Management Magazine recently reported that 51 percent of all cargoes in U.S. Pacific trade in 1975 moved by the railroads' bridge service, thus bypassing the Panama Canal.

The question remains as to the ability of U.S. railroads to handle the traffic demands that might be placed on them were the Canal to be closed to traffic. The railroads would absorb the additional traffic without difficulty in the long run. Even if the entire 117 million long tons (131 million short tons) that transited the Canal in fiscal year 1976 were to be tendered to U.S. railroads, an unlikely prospect, the resulting increase over the 1,406 million tons that the U.S. railroads originated in 1976 would be only 9.3 percent.

It is of course unlikely that all of the traffic presently moving through the Canal would shift to American railroads. Shipments with neither origin or destination in the U.S. would in many cases shift to other all-water routes, such as around Cape Horn (where a considerable amount of bulk cargoes are now moved in giant vessesl), or around the Cape of Good Hope, or through the Suez Canal. Some of the Panama Canal traffic might simply cease to move at all, as consignees turned to other suppliers whose location did not require moving cargoes through the Canal. Canadian railroads would offer another alternative to cargoes that shifted to "land-bridging" across North America, were the Canal to be closed.

Indeed, the traffic most likely to be diverted to U.S. railroads in the event that the Canal were to be closed would be traffic that has either a U.S. origin or a U.S. destination or both. The table below shows the volume of such traffic in fiscal year 1976:

	Long tons
Origin:	
East Coast United States	46,407,921
West Coast United States	7,395,949
Destination:	
East Coast United States	20,198,924
West Coast United States	8,754,132
Subtotal	82,756,926
Less duplications	[1] 4,677,888
Total: Panama Canal traffic with U.S. origin or destination	78,079,038

[1] Panama Canal traffic with both U.S. origin and destination is counted twice in the detail, once by origin and once by destination.

These 78 million long tons would, if totally converted to "mini-bridging" on U.S. railroads, cause a 6.2 percent increase in originated tonnage.

The commodities that move in volume through the Canal are pretty much the same as those that move in volume on American railroads. One notable exception is petroleum and petroleum products, the largest category of Canal traffic. The railroads have lost most traffic in liquid petroleum products to pipelines and trucks, so the railroads would be ill-equipped, in the short-run at least, to handle the 22 million long tons of petroleum and petroleum products that moved through the Canal in 1976. (Total rail traffic in petroleum and its products in 1975 was only 45 million short tons.) After petroleum, the principal categories of Canal traffic are (in descending order): grains, coal, iron and steel products, ores and metals, fertilizers, miscellaneous agricultural commodities, lumber and products, canned and refrigerated foods, chemicals and petrochemicals, and machinery and equipment. U.S. railroads presently carry volumes many times larger of each of these commodities.

While the railroads should have little difficulty in meeting the demand of this additional traffic after an adjustment period of one to two years, the ability of the railroads to handle immediately the large surge that might result from a sudden, unanticipated closing of the Canal is more open to question. Two bottlenecks would probably occur if the Canal were to be suddenly closed and freight traffic tendered to U.S. railroads were to increase seven percent or so. First, there would be temporary shortages of equipment, freight cars and locomotive power. It would seem likely, however, that some of the sudden surge in demand could be accommodated with the existing fleet by improving its utilization. Average freight car utilization rates, for example, are considerably lower today than at times in the past. To the extent that additional freight cars and locomotives are required, the current lead time from order to delivery for freight cars is about 3–4 months and 4–5 months for locomotives. Further, freight car production in recent years has been sustantially below the productive capacity of U.S. freight car builders. Thus, the potential for improved car utilization plus the capability of the car builders and locomotive manufacturers to bring about a fleet expansion would alleviate the temporary shortages within a few months.

A large portion of oceangoing traffic is containerized. Consequently, much of the surge in demand that would accompany a closing of the Canal would be concentrated on container-carrying flat cars. Temporary shortages of flat cars might, therefore, occur. However, even this shortage could be avoided by organizing "unit trains" of flat cars that could be shuttled rapidly back and forth between Atlantic-Gulf and Pacific Coast ports, thereby achieving much higher rates of utilization.

The more serious bottleneck that might occur is at U.S. ports. Many U.S. ports and the railroads serving those ports have made large investments in recent years to modernize and expand the capacity of those ports, partly in response to the growing popularity of land-bridge and mini-bridge arrangements. Nevertheless, the surge in traffic that might result from a sudden closing of the Canal could overtax the capability of those ports, leading to temporary congestion and delays.

The willingness of the railroads and the ports to expand their fleets and their cargo-handling capacity in response to a closing of the Canal would be greatly influenced by whether the closing were understood to be temporary or permanent. It would be poor economic sense for either to invest large sums to expand capacity if the Canal closing were seen as only temporary or some alternate route across the Isthmus of Panama were to be developed.

Beyond the temporary problems of car shortages and port congestion, there is no question as to the ability of the railroad route network to handle an 8–10 percent increase in throughput. It is widely held that the railroad network has the capacity for carrying twice as much traffic as at present.

The ability of the railroads to meet a sudden surge in demand was dramatized during the build-up for World War II. In just one year, 1941, railroad ton-mileage jumped 27 percent over the previous year to a record high level. In 1942, it grew an additional 34 percent in just one year. Then in 1943, it grew still another 14 percent. More recently, it grew 15 percent in the 1973–1974 period.

In sum, the physical volume of cargo moving through the Canal would present no unmanageable demands on U.S. railroads, even in the most unlikely event that 100 percent of it were to be diverted to the railroads if the Canal were closed. There is adequate capacity in the route network to handle an even greater surge in demand. Car utilization could be sufficiently increased in an emergency to accommodate the additional priority cargoes, with the probable exception of petroleum and petroleum products. If additional cars and locomotives were needed, the lead time for their production would not exceed six months. Bottlenecks, were they to exist, would probably occur at the ports. The railroads' performance during the World War II build-up provides comforting evidence that the railroads could respond even to a sudden closing of the Canal in stride.

If we may provide additional information or assistance to you or your committee, please let us know.

Sincerely,

RICHARD E. BRIGGS.

Mr. LINDINSKY. And if my memory serves me correctly, I believe they said they would be able to handle all the cargo that would be diverated from the east and gulf coasts. So there seems a natural desire there to haul this cargo minibridge and microbridge to the west coast.

One also reads of these constant boxcar and flatcar shortages. It seems contradictory. I will however, supply that letter for the record.

Colonel HAAR. I would like to add, if I may, one little caveat to what Mr. Lidinsky just said. I think in the case of grain, the movements are so huge that even though there could be some diversion, I think they might be hard pressed if you got into some massive numbers of being able to handle all of it.

Mr. MERIN. I have read Mr. Brandes 1978 report as well as some other studies. I wonder if you could clarify one point for me. In general terms, if that is possible, how much of the cargoes that are currently going through the canal can be routed through the minibridge. Are there certain types of cargoes that are susceptible to alternative means of shipping?

Dr. BRANDES. According to the records of the canal, cargo is either classified by the actual commodity or it is characterized as containerized cargo. The latest data that I have seen showed that for approximately 123 million tons, thereabouts, that went through the canal in 1977, I believe, that 9½ million tons was classified as containerized cargo.

Now,this does not mean that only 9½ million was containerized. There was some other cargo that was also containerized, but the shipper specified what was in it, and then the canal would show it as cotton or drums or other manufactured goods, even though they were in a container.

Our estimate is that containerized cargo accounts for approximately 10 million tons of the cargo going through the canal at the present time. It depends entirely on how the ship reports its cargo as it goes through the canal, whether it calls it simply containers, miscellaneous containers or whether it specifically identifies the cargo, what it actually consists of.

Our best guess is that approximately 10 million tons of the cargo going through the canal consists of containers in terms of actual weight tons.

Mr. MERIN. This is not to say that other noncontainerized cargo could not be shipped by rail or other means?

Dr. BRANDES. That is right.

Mr. LIDINSKY. The vast majority of the cargo going to the Northeast, to New York, Boston, Philadelphia, and Baltimore, is containerized. We differ from New Orleans in that our bulk movements are very minimal.

Most of our canal tonnage is containerized because of the consumer-oriented-type goods from the Far East going to our part of the country.

Mr. MERIN. One final question. Earlier this morning, you were talking about the cost, the increased cost of tolls and how much of that would be passed on to the consumer, and I think you used one-third, and three or four other people have used something higher.

Would you give me some general guesstimate as to what that figure would be? If tolls go up, say, 50 percent, how much of that would be passed on to the consumer and how much would be absorbed by the shipper.

Dr. BRANDES. At the present time, we are talking about a toll base of roughly $200 million. A 50-percent increase in tolls would yield slightly less than 50-percent increase in revenues, so I would guess another $80 million.

According to the yardstick, that I use, roughly 33 percent of that or $27 million, more or less, would be paid for by the American consumers. We think that the American consumer pays one-third of the Panama Canal tolls and obviously be is likely to pay the same portion of any increase.

Mr. MERIN. Thank you.

Mr. HUBBARD. To Colonel Haar, Mr. Lidinsky, Mr. Prior, and Dr. Brandes, I want to extend, on behalf of our subcommittee, our commendation for your intense effort and interest that has been shown by the reports on the issue of treaty implementing legislation. We appreciate your common efforts.

We thank each of you as we express appreciation to Mr. Leonard Kujawa and Mr. Philip Steers Jr., who testified earlier for your constant willingness to provide counsel and assistance to our subcommittee and members on the staff.

We hope to talk informally with you again in the very near future. We take your concerns very seriously. We share many of your concerns about the Panama Canal Treaty. Thank you.

Mr. Hubbard. Our next witness will be W. M. Benkert, president of the American Institute of Merchant Shipping. We apologize to Mr. Benkert for his lengthy wait to be heard. He was bumped by three Members of Congress, we might say, who were here to introduce their constituents. We have heard the constituents, and now we look forward to hearing you, Mr. Benkert.

And then we will hear Mr. Blocklin and Captain Clark together and that will conclude today's hearing. Go ahead.

STATEMENT OF W. M. BENKERT, PRESIDENT OF THE AMERICAN INSTITUTE OF MERCHANT SHIPPING, ACCOMPANIED BY BARBARA BURKE, LEGISLATIVE ASSISTANT, AMERICAN INSTITUTE OF MERCHANT SHIPPING

Mr. Benkert. Thank you very much, Mr. Chairman. With your permission, I have with me Ms. Barbara Burke, who is the American Institute of Merchant Shipping legislative assistant.

Mr. Hubbard. Barbara Burke, nice to have you, and you are Admiral Benkert, right?

Mr. Benkert. Yes, sir. I am a civilian now, Mr. Chairman.

With your permission, Mr. Chairman, I have a very short, brief, hopefully to the point, statement which I would like to read. It is just three pages long,and I would like to go ahead and read this.

Mr. Chairman, members of the subcommittee, I am William M. Benkert, president of the American Institute of Merchant Shipping, known as AIMS. AIMS is the national trade association of the American-flag oceangoing merchant fleet, and includes in its membership 27 companies which own or operate U.S.-flag tankers, liquified gas, chemical and dry bulk carriers. Many of our members regularly utilize the Panama Canal in their operations; therefore, of course, we have a substantial interest in this treaty implementing legislation.

The primary concern of shipowners is the continued, safe, efficient and nondiscriminatory operation of the Panama Canal for reasonable toll charges. We feel certain that the Commission will recognize this waterway's commercial value and will work to maintain it. Therefore, timely enactment of implementing legislation to prepare for and insure such uninterrupted efficient service is of paramount importance to us.

Vessels which currently utilize the canal do so because of a substantial savings realized as opposed to the increased transit time and obvious operating costs involved in longer and differing alternative routes.

Many of our U.S.-flag tankers are involved in the carriage of Alaskan North Slope oil of which 400,000 barrels per day pass through the canal. However, we do anticipate that possibly as early as mid-1982 economically attractive alternatives to canal transit may be offered in the form of west coast pipeline transportation.

For this reason, tolls must be kept at the lowest level possible consistent with covering all direct expenses including necessary plant replacement or improvements so that the canal can continue to be a commercially competitive route for those wishing to utilize it. This will help to insure that the canal will be a self-sustaining operation when it is turned over to complete Panamanian control in the year 2000.

Therefore, Mr. Chairman, we support the repeal in H.R. 1716 of interest payments to the Treasury on the U.S. net direct investment in the canal. AIMS has urged repeatedly over the years that this amount not be included in the tolls base in order to avoid excessive toll increases which place the burden of covering this requirement upon canal users and ultimately consumers.

Similarly, we oppose requiring further amortization payments, which, together with the interest requirement, would add another 17 percent to a toll increase. We feel the canal has already paid for itself through its availability to meet national defense needs over many years, so that this unnecessary additional expense should not be required.

Additionally, on the matter of tolls, we are in favor of the provision contained in H.R. 111 which governs the procedure for effecting changes in toll rates. This procedure involves two stages, with publication of proposals in the Federal Register, public hearings and final effectiveness 30 days following Presidential approval. This system would appear to provide greater protection against possible unjust toll increases by allowing a longer period for review.

And I might add, Mr. Chairman, in my opinion, a specific requirement for true, full, thorough justification of increases.

On the subject of claims for damages, we favor the approach in H.R. 1716 which does not limit the authority of the Panama Canal Commission to settle suits above $60,000 for damage outside the locks.

We feel that $60,000 is inadequate for today's economy, and at any rate, canal usage is international in nature so such claims adjustment should not be a burden placed upon the U.S. taxpayer.

Inasmuch as shipping is a global industry and the canal provides a service to world commerce, we would like, Mr. Chairman, to take this opportunity to express the views of the International Chamber of Shipping, the ICS.

The ICS asked AIMS as the U.S. constituent member of that organization to convey its position to the U.S. Congress.

As you, Mr. Chairman, may know, ICS is an organization representing shipowners associations in 29 countries, together comprising some two-thirds of world merchant shipping and the majority of free world merchant ships.

ICS has not sought to express any views directly on the question of the new Panama Canal treaties and the transfer of ownership of the canal, believing this to be the prerogative of the United States and Panamanian interests.

ICS believes, however, that it would be timely to make a general comment on the canal and its operation on behalf of the international shipping industry as a whole.

And I quote, Mr. Chairman, if I may:

The Panama Canal is an international waterway of major importance to the shipping industry, and its continued efficient operation, at reasonable cost to users, is essential if economic shipping services are to be maintained.

There are two major factors which influence the use of the canal by shipping companies–the level of tolls and the ability of ships to transit the canal safely and to schedule.

Significant increases in tolls and delays in canal transit both represent major financial considerations for canal users and could encourage operators to consider alternatives to the use of the canal.

Thus while it is very much in the interest of the shipowner that the canal should be efficiently and economically run, equally it is in the interest of the operators of the canal to provide an attractive service and thereby maintain a satisfactory level of usage."

That is the end of the quote, Mr. Chairman, from the communications our organization had from the International Chamber of Shipping. In regard to that last portion of the statement, which I just read, that it is in the interest of the operator of the canal to provide an attractive service and thereby maintain the satisfactory level of usage, I think myself that is very pertinent that they emphasize what one of the previous witnesses just said a little earlier, about maintaining the canal in a businesslike, efficient manner to provide a good service.

I would like to conclude my statement, Mr. Chairman, by essentially concurring with what the ICS has presented in the way of a general statement of approach to the canal and to the legislation, and I would be glad to answer any questions you might have, sir. Thank you.

Mr. HUBBARD. Thank you very much. Mr. Benkert, before I ask you questions, I would like to take a moment to introduce a constituent and friend of mine, Mr. Wendell Cave of the Kentucky Department of Education. Thank you for attending our hearing. I am sorry I cannot meet and talk with you. You have an appointment with Kentucky's two Senators. Just tell them we are trying to implement what they did. Wendell, I regret again I cannot even shake your hand, but I am doing the best I can. I am the only member here.

I commend your statement, Admiral Benkert, for looking at the long range good of the Panama Canal and not just the short term. Certainly a good capital program is necessary to keep the canal operating beyond the year 2000.

We must have an adequate handle on that program, however, to insure the users get everything they pay for. In your statement, you indicate a preference for the claims regime established by the administration's bill, 1716, because the $60,000 limit in Chairman Murphy's bill is too low.

If that limit were raised to around $250,000 would that eliminate your chief objection to the claims regime in Chairman Murphy's bill or do you see other problems?

Mr. BENKERT. I think, Mr. Chairman, I find my objection is to putting a limit on the damage outside of the locks because you would perhaps get into a very lengthy congressional procedure, and some kind of an additional expense to the taxpayers of the United States.

I feel that the Commission itself should be able to settle, adjudicate claims, whether they happen within the locks or outside the locks. If you have an accident within the locks, as I understand it, the Panama Canal is specifically responsible in settling the claims.

Mr. HUBBARD. Do you have a preference as to the form of agency for the Panama Canal Commission?

Mr. BENKERT. No, sir.

Mr. HUBBARD. Regardless of whether the Commission is an appropriated fund agency or Government corporation, is it not correct that the users main interest is to receive expeditious transit and to know the financial results of operations and what is being paid for by the tolls?

Mr. BENKERT. Yes, sir. I agree with that fully, and if I could add to that, sir, I think that the basic premise should be to have a good, businesslike operation just like any other business. There are going to be additional charges that are necessary for the safe and efficient operation of the canal. The system for implementing those charges should be an open one, subject to review and to question; in fact, toll increases should be fully justified so that the user knows what he is paying for and why.

And I think in this case, the user as with any other service, should be prepared to pay a reasonable price for good service.

Mr. HUBBARD. Counsel for the majority?

Mr. TANNENBAUM. No, sir.

Mr. HUBBARD. Counsel for the minority?

Mr. MERIN. AIMS is the U.S. constituent member of ICS?

Mr. BENKERT. Yes, sir.

Mr. MERIN. Is there a Panamanian constituent member of ICS, because the Panamanian flag line is fairly large?

Mr. BENKERT. Yes.

Mr. MERIN. There is a Panamanian member?

Mr. BENKERT. Yes.

Mr. MERIN. Do you know if they took any position on the treaties?

Mr. BENKERT. My answer is no. The ICS itself as an overall association comprised of individual countries' associations took no position, as I said before, because they felt this was a matter for the United States and Panama.

Mr. MERIN. While the treaties were lying before the Senate, did your organization do any forecast or analysis of what impact the cost requirements might have on the members of your organization?

Mr. BENKERT. No.

Mr. MERIN. Thank you.

Mr. HUBBARD. Thank you, Admiral Benkert, for your information. Sorry you had to wait so long.

Mr. BENKERT. Thank you very much for taking me, Mr. Chairman.

Mr. HUBBARD. We were intending that you precede the four who just left.

Mr. BENKERT. I enjoyed listening to their testimony.

Mr. HUBBARD. Thank you for your cooperation.

We will now call the last two witnesses jointly, Capt. J. W. Clark and Hans Blocklin.

STATEMENT OF HANS BLOCKLIN, VICE PRESIDENT, LYKES BROS. STEAMSHIP CO., INC., AND CAPT. J. W. CLARK, PRESIDENT OF DELTA STEAMSHIP LINES, INC.

Mr. **Clark**. Mr. Blocklin has a short statement. I will let him start.

Mr. **Hubbard**. Mr. Blocklin will be testifying in place of Mr. W. J. Amoss of the Lykes Bros. Steamship Co. Mr. Blocklin is the vice president of Lykes Brothers in the District of Columbia area, and we look forward to hearing your testimony.

Mr. **Blocklin**. Thank you, Mr. Chairman.

Mr. **Hubbard**. I am sorry, also, that you two had to wait so long.

Mr. **Blocklin**. No problem. As Mike Benkert said, it was interesting, educational, and partly enjoyable.

Mr. Chairman, Lykes Bros. Steamship Co., is one of the largest American flag steamship companies. Our company was founded in 1900. It has served as a common carrier in foreign commerce from the U.S. gulf ports for over 79 years. Lykes also serves ports in the South Atlantic and ports in the Great Lakes, and this year has commenced services from west coast ports to the Far East.

The Lykes fleet totals 44 large, modern vessels, registered under the U.S. flag and manned by U.S. crews. Lykes is a major user of the Panama Canal and its services from gulf ports to Japan, Korea, Taiwan, and Hong Kong, on its service to the Philippines, Indonesia, Singapore, and Thailand, and on its service from gulf ports to the west coast of South America.

And I might add parenthetically that we are hopefully very shortly to be using it in our service to China, to the Peoples' Republic of China.

The New Orleans Steamship Association whose membership comprises 60 steamship owners, operators, agents, and stevedores in the port area of New Orleans is associated with literally hundred of shipowners in international commerce.

In recent years the Panama Canal tolls have increased dramatically for cargo vessels, and today tolls for passage through the canal are a significant portion of vessel operating costs which must be recovered through ocean freight rates.

All water services operating through the canal to foreign destinations have been seriously impaired in competition with combination rail and water service to such an extent that steamship service to the Orient has become concentrated in west coast ports and steamship service to European destinations has concentrated itself in east coast ports.

As a result, canal passages for dry cargo liner vessels have seriously declined as have resultant toll incomes. This has produced a situation where rising tolls diminish canal traffic and diminished canal traffic creates further rising tolls.

It is already apparent that this cycle would be intensely felt by the Canal Company were it not for the recently increased movement of crude petroleum through the canal brought about by the development and shipment of Alaskan oil to gulf and east coast refineries.

As this committee surely knows, however, plans are underway for the development of a west coast to midcontinent pipeline that would ultimately displace the sea transport of Alaskan crude via the Panama Canal.

It is, therefore, apparent that urgent operating efficiencies must be adopted by the canal company merely to hold tolls within an economic range that can be borne by dry cargo carriers

While we urge such action, there is little that will encourage us to believe that operating efficiency will be a primary goal of the Canal Company. Indeed, one of the strong reasons for Lykes recent move to establish services to the Orient from the west coast was to recapture cargo formerly carried from gulf ports via the Panama Canal and to hedge future toll trends which may further impair the commercial use of the Panama Canal for U.S. commerce.

We believe that proposals to limit the range in which tolls may be increased and to provide for the inclusion of knowledgeable persons with a shipping background as members of the Commission are actually imperative if control is to be maintained in the future operation of the canal.

We urge that the committee adopt such a proposal. Not only are they in the interest of the carriers, but indeed, in the interest of the ports, particularly those of gulf and Atlantic region and of American exporters and importers from these areas striving to remain competitive in foreign markets.

That concludes the written portion of our statement.

Mr. HUBBARD. Thank you, Mr. Blocklin. One question.

Could you elaborate for the committee on the thinking that went into your decision to establish services to the Orient from the west coast? I believe this would be a helpful kind of case study for the committee to hear.

Mr. BLOCKLIN. Over the last 5 years as canal tolls have increased, we have seen an increasing amount of cargo go minibridge, microbridge, et cetera, and shippers avail themselves of that route.

We were seriously affected by it so much so that our sailing has decreased by about 30 percent on the Far East run.

Mr. HUBBARD. Thank you.

Counsel for the majority?

Mr. TANNENBAUM. Just one curious question. Here you say on page 2 there is little to encourage us to believe that operating efficiency will be the primary goal of the Canal Company. Do you care to elaborate on that?

Mr. BLOCKLIN. I tell you we worry about commissions. We were not particularly enchanted with the previous commission as far as any indication on their part that they were seriously concerned with the problems that we as carriers and shippers had.

Unless you have very stringent controls and a commission comprised of knowledgeable people we are afraid that this might be like other commissions, a commission that rubber stamps certain policies and we are forced to bear the result.

Mr. TANNENBAUM. Thank you.

Mr. HUBBARD. Any other questions?

Mr. TANNENBAUM. No.

Mr. HUBBARD. Counsel for the minority?

Mr. **Merin**. Just one, sir. Did your organization correspond with or testify with either of the Senate committees when they were considering this treaty?

Mr. **Blocklin**. We provided some background information that was, perhaps, used. We furnished it to Senator Strom Thurmond and his people. The delegation from Charleston, at the time, was interested in this problem.

Mr. **Merin**. Did you express your concern about the tolls?

Mr. **Blocklin**. Yes.

Mr. **Merin**. Thank you.

Mr. **Blocklin**. I might be able to provide what we provided but I guess you can get it.

Mr. **Hubbard**. Thank you very much, Mr. Blocklin.

Capt. J. W. Clark, president of Delta Steamship Lines. We are ready to hear your statement.

Mr. **Clark**. Mr. Chairman, ladies and gentlemen, members of the staff, I understand there is a time limitation. I have a rather lengthy statement which, if it pleases the committee, I would like to have you insert in the record. I will just touch briefly on some of the high points.

[The following was received for the record:]

PREPARED STATEMENT OF CAPT. J. W. CLARK, PRESIDENT, DELTA STEAMSHIP LINES, INC.

Thank you, Mr. Chairman and members of this subcommittee, for the opportunity to appear here today and express my views on legislation intended to implement the Panama Canal Treaties of 1977. My name is J. W. Clark and I am president of Delta Steamship Lines, Inc., headquartered in New Orleans, Louisiana. We operate twenty-four ocean-going vessels under the United States Flag, serving Latin America from the U.S. gulf, Atlantic and Pacific coasts, in addition to Caribbean Islands and West Africa. Four of our vessels are combination cargo-passenger vessels carrying approximately one-hundred passengers each,—the last passenger vessles remaining under the U.S. flag. We anticipate that vessels of our Delta fleet alone will accomplish at least 125 transits during 1979, and therefore Delta is one of the principal users of the Canal. I have some personal knowledge of the Canal's operation, having visited the Panama Canal Zone on many occasions during the past thirty years.

In addition to Delta, there are four[1] other U.S. flag liner companies which regularly transit the Canal, also U.S. bulk carriers, and an increasing number of "Panamax" U.S. flag tankers engaged in the Alaskan North Slope oil shuttle.

I am confident that all informed U.S. citizens share some concern as to the future operation of the Panama Canal and the resulting effect on our national security and national economy. Of the total Panama Canal traffic, about two-thirds now originates or is destined for the U.S.A., directly or indirectly affecting all U.S. citizens. This refers to commercial traffic alone—the foreign commerce of the United States.

The Panama Canal treaties are now fait accomplis and it would serve no useful purpose to contemplate amendments. However, the Congress does have an opportunity now, in considering implementing legislation, to carefully consider the best interests of our country in the implementation process. I recognize that distinguished Members of the Congress are far better qualified than I to judge national security and political aspects and, recognizing the time restrictions, I will confine my remarks primarily to operational and economical questions affecting U.S. foreign commerce and, particularly, U.S. flag liner operations.

TOLLAGE

In 1974 and 1976, tollage increases coupled with changes in the measurement rules resulted in an increase of approximately 50 percent in the tollage rate, which is now $1.29 per Panama Canal net tonnage. Under the terms of the treaties it is estimated that payments to Panama, unrelated to operating costs, will approximate seventy million dollars per annum which, on the basis of reported 1978 operating costs of $314.3 million,[1] would mean that the tolls apparently would have to be increased about 22.3 percent to cover these political payments alone. In my opinion, it is inequitable that users should be compelled to pay for costs unrelated to actual canal operation.

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[1] U.S. Lines, Farrell Lines, Lykes, and Waterman.

If interest payments of approximately $19.3 million per annum are to be continued, plus an accelerated depreciation rate to recover U.S. investment by the year 2000, plus early retirement costs, etc., we could expect, according to previous testimony, that initial tollage increases of the magnitude from forty to fifty percent would be imposed. It seems rather obvious that it was the intent of the administration to convey the canal to Panama at noon, Panama time, December 31, 1999, in good operating condition, which will entail considerable expenditures for both capital improvements and required maintenance and repair over the next twenty years. In effect, the canal will be handed over intact, as a "going concern," as a "gift" from the people of the United States to the Republic of Panama. Therefore, it seems rather unfair that all these costs should be borne solely by the users, the majority of which are engaged in the foreign commerce of the United States. It is widely recognized that the basic considerations affecting the drafting and ratification of the Panama Canal treaties were primarily related to U.S. foreign policy.

While it is assuring to receive the advice of Governor Harold R. Parfitt that the initial toll rate increase should only approximate 14 percent under the administration's proposal, (H.R. 1716), this prediction is contingent upon; a continuation of the North Slope oil movements through the canal; a healthy growth in other segments of traffic; and elimination of interest payments and retirement benefits, etc. from inclusion in canal operating costs. In practice, there has already been a substantial diversion of canal traffic through mini-bridge, micro-bridge and land-bridge, increased use of the Suez Canal, and routing of large bulk carriers via the Cape of Good Hope. Both Governor Parfitt and Dr. Ely M. Brandes, president of International Research Associates—who has been an economic consultant to the Panama Canal Company on the subject of tolls and revenues for the past fifteen years—are in apparent agreement as to the sensitivity of canal traffic to toll increases, diminishing returns, etc. It should be apparent to all concerned that any further toll increases above twenty-five percent will impact on traffic, causing a gradual but irreversible trend toward less users, required further increases in tollage, etc. When the Sohio/Pactex (Longview to Midland) pipeline is completed in 1982 canal revenues would be sharply affected, requiring prompt upward adjustment in tollage rates, further diversion of traffic, thus accelerating the vicious cycle of higher rates on the fewer and fewer surviving users.

It is significant that both Dr. Brandes and Governor Parfitt strongly recommend that every care be made to minimize tollage increases in order to maintain the long term financial viability of this vital waterway. There are alternatives to using the canal, and any prudent private shipowner must consider all of the options if he is to remain in profitable operation. It was once suggested to me by Ambassador Ellsworth Bunker that the increased cost of the canal could always be passed along in the form of freight rate increases. This is illusory, both from the point of view as to the practicability of raising rates to keep U.S. products competitive with foreign sources of supply, as well as from competitive services utilizing mini-bridge, etc. Besides, our importers and exporters are also taxpayers. I felt compelled to remind Ambassador Bunker that no American vessels have a guarantee of profit, nor do we have control of freight conferences. In practice, it has been our consistent policy to encourage trade by maintaining efficient, frequent services at reasonable rates. American Liner Companies can only prosper when American importers and exporters prosper, as we have only one thing to sell—service.

PANAMA CANAL COMMISSION

It is understood that the administration's bill would pattern the Panama Canal Commission after the present Panama Canal Company, making only those changes in organization and functions as are required by the treaty. The President of the United States has traditionally appointed the Secretary of the Army to serve as "stockholder" of the Panama Canal Company. The Secretary has consistently designated a general officer of the U.S. Corps of Engineers as both Governor of the Canal Zone and as President of the Panama Canal Company. Further, the Board of Directors, consisting of between nine and thirteen members appointed by the Secretary of the Army, until recently was composed primarily of distinguished private citizens. It is my understanding[2] that the administration bill, H.R. 1716, contemplates that the President intends that the Department of Defense, acting through the Secretary of the Army, shall exercise oversight of the Panama Canal Commission and, further, the President intends to designate as U.S. members of the Board of Directors of the Panama Canal Commission senior officials drawn from interested departments. The Defense representative would serve as Chairman of the Board, with other members drawn from the Departments of State, Treasury, Commerce, and Transportation.

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[1] Gov. H. R. Parfitt.

[2] Department of State, testimony of Hon. David H. Popper.

By contrast, H.R. 111 proposes that the Panama Canal Commission shall be "* * * established as an agency and instrumentality of the United States * * *", and that the Commission "* * * shall be supervised by a board which shall act under the direction of the Secretary of Defense", which board shall include four additional nationals of the United States, with the specific proviso the "No member of the Board other than the Secretary of Defense of his designee shall hold any other office in or be employed by the Government of the United States or of the Republic of Panama". Further, H.R. 111 proposes that "The President shall appoint the members of the Board, by and with the advice and consent of the Senate."

In order to provide professional experience on the Board to efficiently operate the Canal on a business-like basis, maintaining the utmost economy in operations to minimize the obvious dangers of a spiraling cycle of tollage increases, with diminishing returns. I am of the conviction that the implementing legislation should provide very specific provisions for the nomination of the five Board members of the Commission representing the United States. Obviously, for national security reasons, the Secretary of Defense, or his designee, (presumably an outstanding engineering officer) should be the Chairman. The other four members should be representative of the United States interests most heavily involved and affected by the future operation of the Panama Canal. I therefore recommend that the implementing legislation shall specifically provide for a well balanced Board composed of the following: (1) the Secretary of Defense, or his designee; (2) a corporate executive representative of U.S. import-export interests dependent on the use of the Canal; (3) a representative of east and gulf coast ports, experienced in the flow of U.S. foreign commerce through the Panama Canal; (4) a senior official of the AFL–CIO, preferably representative of U.S. Maritime Labor; and (5) the president of a U.S. flag steamship line actively engaged in operating liner vessels in regular service through the Panama Canal.

I would like to remind this subcommittee that the appointment of senior corporate executives to such boards would not be novel. Members of the Board of the Panama Canal Compamy have been previously drawn from the ranks of private industry. This has also happened frequently in the appointment of United States Ambassadors, cabinet officers, U.S. delegations, other government posts, advisory committees, etc. The usual security clearance would apply. Government officials, although they may be well qualified for their respective positions in government, are usually not business oriented, especially in the areas of operational expertise, cost control, etc. A commission composed entirely of government officials would probably be more concerned with political matters than operational considerations. "Over-riding political considerations" have only too often adversely affected U.S. business interests abroad.

Due to the critical importance of selecting well qualified representatives for the Commission, I do feel that a public review of their qualifications is essential and I therefore recommend that the President shall appoint the members of the Commission, with the advice and consent of the Senate.

Referring now to composition of the consultative committee, the Treaty provides for "* * * an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate." In view of the Board advisory role of the consultative committee in the continuity and efficiency of the Canal operation in the future, with impact on general tolls policy, employment of Panamanian nationals, etc., it would appear advisable that the consultative committee should be appointed by the Commission itself. This would make for a much more efficient organization and could avoid possible future conflicts between the parties.

As to the selection of the five United States representatives, I would recommend that the Panama Canal Commission submit nominees to the President for consideration and appointment. The same procedure should be followed with regard to the appointment of the Administrator and the Deputy Administrator. This would be in consonance with usual corporate practice, which is apparently advocated by the administration.

MAINTENANCE AND REPAIR

During my most recent trip to the Canal Zone, a few months ago, it was my privilege to confer with Governor Harold Parfitt and his staff, senior Panama Canal Pilots, steamship line agents and prominent businessmen. I also personally made a transit of the Panama Canal aboard one of our passenger vessels, during which I endeavored to most carefully observe the operation of the locks as well as the navigation of the vessel, etc. Throughout my visit I was constantly reminded of the imperative need for constant and effective repair of the physcial facilities, the retention and/or replacement of the skilled supply of Panama Canal pilots, engineers and other technicians. It appears certain that, without adequate incentives, there will be a loss of those most skilled in the operation of the canal through early retirement, with inadequate provision for qualified replacements. There has really been very little change in the physical operation of the canal during the past thirty years since I have known it. The massive equipment, although maintained throughout the years in good order, is simply getting old, and unquestionably capital expenditures will be required to maintain a continuing efficient operation. As an example of maintenance problems, we just last week received advice from our Panama office that a critical lock overhaul at Gatun Locks commenced on March 2nd and is expected to continue through March 24th, with large numbers of vessels awaiting transit. Delays experienced have been 24 to 36 hours and are expected to increase, the Canal Company has stated that they are unable to suspend or delay overhaul as the condition of the lock valves are so poor that repairs are essential to avoid possible failure and complete interruption of transits.

Unfortunately, many of our most skillful pilots and engineers are nearing retirement and must be replaced. Despite a provision in the Panama Canal Treaty for the training of Panamanians, this will take considerable time and most careful consideration must be given to qualifications. I have been closely associated with many friends throughout Latin America for the greater part of my life and I certainly have a very high regard for Latin American professionalism. Unquestionably, there are many well educated and competent Panamanains who could assume top level operational and administrative responsibilities. However, great care must be taken to avoid "political" appointments of individuals without proper qualifications, training and experience. Reference is made in the Panama Canal Treaty (article X-4) that "* * * the United States of America without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama." This sounds adequate but, unless specific provision is required for detailed examinations, minimum experience required, etc., it would be extremely difficult to deny applicants possessing Panamanians licenses. As an example of my concern, I would cite the example of licenses which can be issued by Panamanian consuls for ships officers, including masters. It is common practice for applicants to obtain such licenses, even authorizing them to command the largest ships afloat, without undergoing any examination or demonstration of any experience, simply by paying a small sum of money. Imagine the employment of such a person as a Panama Canal pilot. The utilization of unqualified personnel could result in severe disasters, causing complete interruption of Panama Canal traffic.

In this connection, I would remind the subcommittee that there is a provision in the 1936 Merchant Marine Act, (sec. 216(B)(1))[1] which provides "* * * two vacancies shall be allocated each year to the Canal Zone, to be filled by qualified candidates nominated by the Governor of the Canal Zone from among the sons of residents of the Canal Zone and the sons of personnel of the United States Government and the Panama Canal Company residing in the Republic of Panama * * *"

Apparently this provision would cease as of October 1, 1979, and I would certainly recommend to this subcommittee that provision be included in the implementing legislation for the continuation of this essential training program (with due consideration for recent rule changes related to gender). Further, I would urge that special training programs for Panamanian candidates should be expanded in view of the urgent necessity of preparing qualified Panamanians to assume essential administrative, engineering and pilotage responsibilities.

CONCLUSION

Unless the canal is competently managed during the next twenty years, it is entirely possible that Panama will inherit a "white elephant"—a canal frequently inoperative due to operational failures, and with little hope of attaining the expected financial returns. The consequences of a failure to maintain the canal as a viable operation would not only adversely affect Panama, and our foreign commerce, but also the foreign commerce of all Latin American nations whose economies depend to a substantial degree on the canal. The U.S. economy will become increasingly dependent on sources of strategic and critical raw materials available in Latin America. Allow me to remind you of some pertinent history.

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[1] U.S. Merchant Marine Academy

In 1954 Congress investigated the accessibility of strategic and critical materials to the United States in time of war and for our expanding economy. This report is frequently referred to as the Malone report: (Senator George W. Malone was then chairman, Minerals, Materials, and Fuels Economic Subcommittee, Committee on Interior and Insular Affairs). Among other things, the committee confirmed that the availability of critical and strategic materials are vital to both military security and to our expanding domestic economy, with major emphasis on ample and uninterrupted supplies of 77 critical raw materials. To assure that the essential needs of the United States be met, the committee recommended the closest cooperation among the nations of the Western Hemisphere, as the only dependable source of these vital materials. The committee conducted hearings over ten months, examined more than 360 distinguised witnesses, and produced then volumes of testimony.

In the summary of evidence the committee specifically stated:

"We belong in the western hemisphere.

"Our ultimate security is threatened if any European or Asiatic nation moves into that area to gain military, political, or economic control.

"Therefore, close cooperation between the nations of the Western Hemisphere is immediate and compelling."

While the Malone committee was primarily directed to review the accessibility of critical materials in time of war, particularly to its effect on national security, it is significant that the expanding national economy received equal consideration. In the 24 years since this report was published very little has changed. The U.S. is still dependent on foreign sources for the bulk of its strategic raw materials, except that the list of such materials has grown. We now have dramatic evidence of how dependence on foreign sources of petroleum can cripple the economy. The Malone committee even predicted the possibility of a complete shut-off of Middle East oil—in 1954—when the U.S. had plentiful supplies of domestic oil.

Our trading relations with Latin America are vital to our national interests and, as Senator Malone and his colleagues so aptly stated, "We belong in the Western Hemisphere."

Mr. Chairman, members of the committee, I attach hereto my response to the seven (7) specific questions propounded by the committee. I will now be pleased to respond to any other questions.

RESPONSE OF J. W. CLARK TO QUESTIONS PROPOUNDED BY THE PANAMA CANAL SUBCOMMITTEE, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES

(1) Since the base for canal tolls is a reflection of various costs which may be attributed to canal operation or defense, what suggestions do you have as to those elements which should be included or excluded in the tolls base? What prospective costs can be reduced or eliminated?

A. I have discussed this in some detail in my prepared statement. Obviously, every economy should be practiced and I specifically propose the following:

(1) While the treaty specifically provides for certain "political" payments to the Republic of Panama (to be paid from operating revenues), such payments are related to foreign policy considerations and, in my opinion, should not be properly charged to users. Under the circumstances, perhaps the implementing legislation could provide for another source of revenue from which these payments could be made.

(2) The cost of interest and amortization should be eliminated as, in effect, the U.S.A. is making a "gift" of the canal facilities to the Republic of Panama. Further, any future capital expenditures should not be related to user tolls. Retirement benefits, etc. and any figures not directly related to the physical operation of the Panama Canal should not be included in computing tollage assessments.

(2) Do you have any suggestions as to the type of tolls structure that will be appropriate under the regime to be established in the Canal Treaty implementing legislation?

A. As Governor Harold R. Parfitt and Dr. Ely Brandes have emphasized, diminishing returns can be expected following the application of any increase in tollage exceeding 25 percent, rapidly escalating beyond that point to an early point of diminishing returns. Therefore, it would appear that a provision should be made whereby some formula should be found to specify a maximum practicable tollage amount, or maximum percentage of increase. Public hearings should be held in connection with all proposed toll increases.

(3) What is your view as to the merits of the provisions of H.R. 111 and H.R. 1716 relating to procedures for tolls adjustments and changes in measurement rules?

A. I do not consider these provisions to be practicable as they would inevitably result in the not too distant future in diminishing returns as a result of the spiraling cycle of traffic diversion, increased tollage on surviving users, further diversion, etc.

(4) How should the concerns of the ports and the maritime interests of the United States be reflected in the decisionmaking structure for canal matters?

A. In my statement I have suggested that the composition of the Panama Canal Commission, in addition to the designation of the Secretary of Defense (or his designee) as Chairman, should be composed of executives representative of U.S. ports, U.S. steamship lines, maritime labor and foreign commerce.

(5) What is the relative effect of the provisions of H.R. 111 and H.R. 1716 concerning claims procedures? Would the provisions of either bill have any effect on decisions of water carriers to use the canal?

A. The references to "claims" in both proposals appear ambiguous and should be clarified, particularly with respect to owned and chartered vessels.

I do not anticipate the claims provisions will have any significant impact on decisions to use the canal.

(6) What is your view of the provisions in H.R. 111 and H.R. 1716 for the inspection of vessels transiting the canal? Are regulations similar to those governing marine inspection by the United States Coast Guard satisfactory to all users?

A. As long as the regulations are nondiscriminatory as they affect vessels of all flags, and vessels are in full compliance with prevailing international regulatory and classification societies, we feel the provision would be equitable. Regulations similar to those governing marine inspection by the United States Coast Guard are acceptable as long as they are equally applied to vessels of all nations.

(7) What suggestions do you have for accounting policies of the Commission, including the accounting for payments to Panama?

A. This is a question which can probably best be answered by the General Accounting Office, acting in concert with appropriate committees of the House of Representatives and the U.S. Senate. However, accounting policies as well as the accounting for payments to Panama should be made available to the general public on an annual basis, with appropriate press releases, etc.

Mr. Clark. Delta is headquartered in New Orleans. We have 24 vessels, including the last four passenger ships under the American flag.

We project 125 transits through the Panama Canal in the year 1979 including these passenger vessels. So we think we know something about the canal and the significance of what the treaties will mean in years ahead.

On the subject of tollage, it is my conviction that any cost which is not related to the actual operation of the Panama Canal should not be included within the tolls. I am familiar with the treaties. I have read them very carefully.

We have conferred with our congressional delegations on this subject. The payments to Panama, for instance, have been estimated to reach in the area of $75 million a year.

The cost related to defense, and other costs are also involved. The question of interest, the question of amortization, all of these unquestionably will bring the cost of the tollage increase to what I consider will be an almost impossible level within a very short time.

It is imperative that there be understood what the intent of the Congress of the United States was, of the administration, when these treaties were proposed and when they were ratified.

It is basically a question of foreign policy. It is intended that the canal and all of its appurtenances, and all of its equipment will be turned over at the year 2000 to Panama as, in effect, a gift from the people of the United States to the people of Panama, and I think that this committee and other committees of the House, as well as the Senate, should keep that forever in mind.

There are alternatives to using the canal. You have heard a lot of them today. I can tell you right now my company is considering alternatives, and as this vicious cycle continues with increasing tolls, you will have more and more diversion of cargo to minibridge, microbridge, and around the Cape of Good Hope, and the cycle will continue with fewer users and the burden falling on less and less carriers.

Under the circumstances, there is no alternative but to come up with some reasonable level for tolls. We know when the Pactex pipeline comes in the effect will be even more sharply felt.

Ambassador Bunker told me not too long ago that we could pass the charges on to our customers. We have to keep the U.S. importers and exporters competitive with their competitors—the Japanese, the European Common Market, et cetera.

We also have to be competitive with competitors using the minibridge.

Mr. HUBBARD. Captain Clark, in all fairness to you I am going to have to recess for 10 minutes. I am about to miss a vote even if I ran over there and back without stopping. I am sorry. The bells have rung the second time, and I have waited as long as I can. I will be right back.

[Whereupon, a short recess was taken.]

Mr. HUBBARD. In racing over there like a race horse, I did make it. It sure would be nice to have a little better system to notify me of these bells ringing. Maybe next time we will have a room where the bells ring and I will not have to depend on remote control and get there after the time had run out.

Captain Clark, you were in the process of giving your excellent statement. Would you go ahead and proceed now?

Mr. CLARK. Thank you, Mr. Chairman. I appreciate your patience today. I know it has been very trying for you.

Mr. HUBBARD. My apologies for interrupting. I do have two constituents that I would ask to wait on me. I thought you all had left. Is Mr. Fendley still out in the hall?

He did not tell me you all were here, and he did not tell me the bells were ringing. But Helen Davis from Elkton and Clara Mays from Lexington, we appreciate your being here, and we are almost about to complete the hearings so if you all will wait patiently, I will be able to see you.

Now, Captain Clark, please proceed.

Mr. CLARK. Mr. Chairman, I will try to make this as brief as possible, again requesting that my full statement be included in the record.

At the time it was necessary for you to proceed to vote, I was mentioning a discussion I had with Ambassador Ellsworth Bunker just before the ratification of the treaties, at which time I mentioned, from the shipowner's point of view, the problems that would follow and the very obvious possibility of raising tolls far above an economic level and the consequent diversion, a vicious cycle, never ending, with less and less users and more and more tolls until the canal could become almost a "white elephant."

Mr. Bunker at that time said: "Captain Clark, all you have to do is raise your freight rates and pass the cost on to the users," to which I responded, and which I would like to mention now, because it has a very definite bearing on this whole question: "If this is to be done or considered, we have to think about our competition. We will not be in business unless our customers are in business, because all we have to sell is service. This means that our customers must be able to compete with other sources of supply, say, from Europe, the Common Market, and from Japan. If we cannot provide them with a reasonable freight rate, we are out of business."

American-flag ships are not guaranteed a profit. We have to charge the same rates as all of our competitors. Second, we have to compete with the lines that will be using the minibridge. If they can do it cheaper and faster, we are at a competitive disadvantage.

Now, there is one other aspect which I told Mr. Bunker. Our importers and exporters are taxpayers just like we are. So why should the burden fall on such a few? This is it in a nutshell.

Regarding the Panama Canal Commission, I very definitely feel that we should revert to policies of past years when all of the members of the Commission were, in general, I think without exception, private citizens.

Placing only U.S. Government officials—or bureaucrats if you would call them that, as a previous witness stated—on the Commission in my mind is something dangerous. However well qualified they might be for their own positions, they are not usually business oriented, and I do not think they will give us efficient service. They will not be familiar with cost controls.

And this is where this is going to be of tremendous importance if we are going to keep these tolls at an equitable, fair, and reasonable level and not price the Panama Canal out of existence.

Therefore, I would like to recommend that consideration be given to a selection process within the Commission whereby specific categories would be listed: One, the Secretary of Defense; two, a representative import-exporter; three, a port representative knowledgeable about the flow of commerce to and from the United States through the canal; four, a representative of labor—AFL–CIO—because we are going to have a lot of labor problems involved in the movement of cargo through the canal as well as with the aftermath of minibridge which is bound to grow. As you know, the ILA is very much involved in all of this.

Lastly, there should be an active steamship line executive who understands this and who knows whether or not he would be moving in the direction of minibridge or whatever other alternatives, because there are other alternatives.

I had mentioned previously—I do not know if you heard it, Mr. Chairman—that we are considering alternatives, and any prudent shipowner has to do that to stay in business, because the name of the game is making a profit.

I think this would give us a balanced board. Now, with ways and means, whether it is according to Mr. Murphy's bill or the administration's bill, that's up to the wisdom of the Congress to decide.

But the categories should be spelled out, and in order to be sure of a proper overview, it should be with the advice and consent of the Senate.

Going a little bit further to the consultative committee; to me, this is a mysterious committee. I do not really understand it. It would appear that these will be either diplomats, or Members of Congress, or who knows what, but what concerns me now is that it would appear that they would report to their respective governments rather than to the Commission.

Now, if the Government is sincere in its desire to set up a corporate-type concern, there should be a provision for the consultative committee to be nominated by the Commission, to report through the Commission, and the same thing with the Administrator and the Deputy Administrator.

This is all for the sake of good order. Otherwise, there is bound to be conflicts all around the mulberry bush. I am very much concerned if we leave it to diplomats and Government officials that we will be in the same old position which American business has had for so many years, we would suffer at the hands of what they call overriding political considerations.

Maintenance and repair. Mr. Chairman, gentlemen, I have been through the canal many times, both as a shipmaster and most recently in my capacity as head of Delta. I visited with Governor Parfitt and members of his staff, a group of Panama Canal pilots—senior pilots, steamship agents, and various businessmen.

I made a trip through the canal on one of our passenger ships because I wanted to bring myself up to date on the latest developments of the canal.

I want to emphasize that, throughout my visit, there was a constant reminder from everyone concerned from the Governor's office on down that there is a very dangerous morale problem.

You are facing the prospect of losing the most skillful people we have there. These are the pilots, the technicians, the engineers, and so on. They can take early retirement, and there is no real incentive to stay. They now have a wait-and-see attitude.

Something must be done about this. You earlier heard witnesses testify about the sensitivity of the transition period. It is serious. Governor Parfitt himself has stated they have a morale problem. They have a maintenance repair problem and a replacement problem.

And I have a letter here if you would like me to read it. I think he testified to that aspect before.

What is happening is that the canal is getting old. It was opened in 1914. Just last week one of the Gatun locks was at half speed with a constant backlog of 25 to 36, ships building up to 60 it is estimated this week, and the reason was they could not delay repairs because the gate valves were in such bad condition that if they were not promptly repaired, the whole of Gatun locks would have to be shut down. Now, this would be a catastrophe.

But that is what is happening to all of the canal functions. We have to maintain the canal in a going operation, because it is intended that the canal will be turned over to Panama as a going concern for future years.

Now, I do not want to appear critical of the Panamanian technicians at all. I have spent my lifetime in Latin America serving Latin America. I have lived in Brazil. I have lived in Argentina. I have lived in other places in Latin America. I travel frequently there, and I have a high regard for Latin American professionalism.

But what I am concerned about is this. There should be no political appointees to technical posts. As an example, I would remind you and the members of the committee that, as an example, you, sir, without any knowledge of going aboard a ship could, for the sum of approximately $125, be issued a Panamanian master mariner's license enabling you to command the largest vessel afloat without any experience whatsoever, and I can prove that statement, sir, because I had one of our people go to the consul in New Orleans and obtain a master's license and I have it here with me if you want to see it.

Now, just imagine having a pilot appointed on the basis of such a license.

Mr. HUBBARD. Do you have that in your full statement?

Mr. CLARK. I have it in here, yes.

Mr. HUBBARD. That letter you referred to a moment ago, is that also in the folder?

Mr. CLARK. No, sir, I have it separately.

Mr. HUBBARD. Would you enter that?

[The material had not been received at the time of printing.]

Mr. CLARK. I would be glad to. It is dated July 17, 1978.

Just imagine having a man like this, and the same thing would apply to engineers, or anyone who had a license issued by Panama. Despite the provisions of the Panama Canal treaties that there would be necessary examinations and so forth, it would be very difficult to deny any applicant possessing a license if he were politically appointed. It would be very difficult.

So, therefore, I earnestly request that great consideration be given to training Panamanians and that specific instructions and provisions within the implementing legislation be included whereby we are assured of an efficient operation with competent people before they take over, because a catastrophe could ensue which would destroy the canal.

And then the statement of a couple of the gentlemen who testified earlier could come into being, what about $100 million damage? Who would pay for it? What would we do? That had to do with a landslide, but the same thing could apply if a ship went through one of the locks.

Mr. HUBBARD. Can you wrap it up in about 3 minutes? And get some questions.

Mr. CLARK. I am just about finished.

Mr. HUBBARD. The only reason I say that is we have got another vote.

Mr. CLARK. I have a concluding statement, but I will just sum it up this way. In 1954, Mr. Chairman, Senator George W. Mallone who was head of a committee of Congress—and that is within my statement—conducted a complete study on the necessity of doing business with Latin America, because it was concluded that we were dependent upon them for vital raw materials.

He even predicted, or the committee did, in 1954 the Mideast oil shortage. That report is very pertinent right now. I recommend that the committee review that, and I have summarized it here.

Mr. Chairman, gentlemen, I will rest, and leave my report with you.

Mr. HUBBARD. Because of your expertise as president of Delta Steamship Lines and having lived in Latin America for years, were you called upon by any of the White House aides or the Senators for advice regarding the treaties they were signing and ratifying?

Mr. CLARK. The only contact I personally had was a visit by Miss Ann Wexler in New Orleans with a group of us there, at which time her job and her objective was to convince us the treaties were a wonderful thing, and I voiced to her at that point exactly what I am saying now. She was there to convince us and not to listen to us is my feeling.

Mr. HUBBARD. We had a few of those roaming Kentucky.

I would like to ask our staff director if he would share with each member of our full committee the comments of Captain Clark.

I appreciate your informative comments. With respect to your comment on licensing, we hope that the Commission will use all powers given to it by the committee to insure that only qualified pilots and others are appointed.

If your revelations here would not hinder your competitive position, could you give us some idea of what a 25-percent increase would do to specific routes on which Delta operates?

Mr. CLARK. I think an increase up to that 25 percent could be lived with. Anything over 25 percent, there will be diminishing returns and the impact would be more and more. Several American flag liner operators have left the canal service and more are expected to go. You have heard my colleague at Lykes talk about the possibility of them leaving.

You have the American President Lines, Seatrain, Sealand—they have all left.

Mr. HUBBARD. And the main reason you are leaving, Mr. Blocklin?

Mr. BLOCKLIN. It is the major reason: The major reason is the impact on canal tolls that have driven shippers away and have sought alternate inland uses. We are talking about east-west trade across the canal.

Mr. HUBBARD. And you, Mr. Clark.

Mr. CLARK. Not yet, sir; but we may be forced into the same position, and there are alternatives.

Mr. HUBBARD. And you considered those alternatives?

Mr. CLARK. Yes, sir.

Mr. HUBBARD. Questions for the witnesses from counsel?

Mr. MERIN. Just to finish up the story you were talking about earlier. I like stories with happy endings. When you were talking to Ambassador Bunker, you explained to him the problems that this increase in rates would cause. Was he able to come up with a solution to the predicament that you have?

Mr. CLARK. I have known Ambassador Bunker for many years, since he was our ambassador to Argentina, and we are good friends. His concluding remark to me, after my statement, he said:

"Captain Clark, we will never agree," and he turned and he walked away.

Mr. HUBBARD. Captain Clark, it is unfortunate we cannot spend more time with you and Mr. Blocklin. The record will be open for 1 week for any questions that may be related to your excellent statements.

And in addition to Captain Clark's, could you have Mr. Blocklin's comments distributed to the members of the full committee?

Mr. CLARK. It was a pleasure being here. Thank you, Mr. Chairman.

Mr. HUBBARD. That does wrap up and conclude today's hearings. We will adjourn today and meet again at 9 a.m. in the morning in room 340 in the Cannon Building,and hopefully it will be a bigger room with maybe a working clock.

We will adjourn here at 4:30 p.m.

[The following statements were received for the record of the hearing.]

NYK LINE
NIPPON YUSEN KAISHA
HEAD OFFICE TOKYO, JAPAN
Founded 1885

NEW YORK BRANCH OFFICE
ONE WORLD TRADE CENTER, SUITE 5031
NEW YORK, N. Y. 10048
Cable Address: "YUSENLINE NEW YORK"
Telephone : (212) 466-2800

DATE March 9, 1979

REF.

Hon. Carroll Hubbard, Jr.
Chairman, Panama Canal Subcommittee
Committee on Merchant Marine and
Fisheries
Longworth House Office Building
Room 1334
Washington, D.C. 20515

Dear Sir:

I, T. Miura, a head of the NYK Line New York Branch office, am the United States representative of the Japanese Shipowners' Association (the "Association"), and authorized to make this statement on behalf of the Association.

The Association has a substantial economic interest in the level of Panama Canal tolls, and for this reason, wishes to express its view concerning legislation proposed to implement the Panama Canal Treaty of 1977.

As the Subcommittee is aware, shipping companies throughout the world have been experiencing severe difficulties such as, decreasing cargo movements because of economic depression throughout the world, significant increases in national-flag discrimination, and rampant national merchant marine activities without regard for conventional economics. These problems obviously weaken the shipping companies' financial stability. Any increase in operating costs such as Canal tolls would create an additional heavy burden on them.

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In such a situation, the Association strongly urges that practical safeguards be placed in the pending Panama Canal legislation to avoid any future drastic unjustified toll increases, and to stabilize the cost of ocean transportation.

Secondarily, the Association would support the proposed amendment of the North Atlantic Ports Association ("NAPA") which provides that Congress shall be advised of the need and justification for any future increases by alteration of the rules for measurement or by direct levy, with the understanding that the interest of third countries and the interests of users of the Canal shall be taken into consideration in weighing the need for future toll increases.

In addition, the Association would support the thought of NAPA that certain of the five Americans sitting on the Panama Canal Commission should be from the private sector, having either a background in the merchant marine or experience in the shipping business.

In summary, all members of the Association believe that large future Canal toll increases could never be justified, and that the governing statute should establish safeguards with respect to possible future increases.

The Association includes all Japanese shipping companies which own or operate vessels of over 100 gross tons. At present, the Association has 211 member companies, of which approximately 77 operate more than 2,071 ocean-going vessels of almost 92 million deadweight tons. Members of the Association are, as a group, the Panama Canal's largest customer. For example, in fiscal year 1977, Association members paid $35,523,000 in Panama Canal tolls, which accounted for 21.6 percent of the Canal's total toll revenue. Measured by vessel tonnage, Association members accounted for 29,603,000 vessel tons transiting the Canal in fiscal year 1977.

The importance of the Canal to Japan-Unites States trade, the economy of Japan, and the economy of the United States is beyond dispute. Thus, in the year ended December 1977, commercial cargo exported from Japan to the United States was approximately 13 million long tons, while that moving from the United States to Japan was 52 million long tons. The Association estimates that more than half, or 33 million of the total 65 million tons, of Japan-United States trade cargo moved through the Canal.

The size of Canal tolls as a component of vessel operating costs means that any substantial toll increase must ultimately be paid by cargo shipping interests. It must be remembered that shippers of virtually all commodities in the U.S.-Japan trade compete with someone else for their export sales. Some commodities, such as bulk grain, which is the largest single export from the United States to Japan, are extremely sensitive to price levels, with a sale depending upon a penny a ton difference in price.

The Subcommittee is aware that there has been approximately a 50 percent increase in Canal tolls since 1974, notwithstanding the vigorous opposition to this increase of the Association and other interested parties. The 50 percent increase includes

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a 20 percent increase in July, 1974, a 1976 revision of measurement rules which resulted in a 4.5 percent increase, and a 1976 increase of 19.5 percent. At present, a loaded containership will pay an average toll of $35,000 each time it transits the Canal. A bulk grain vessel of 45,000 deadweight tons will pay an average of $23,700 per transit (loaded) and $19,000 per transit (empty).

The adverse effect of the enormous increase in Canal tolls upon the shipping business has been exaggerated by decreases in cargo movements in recent years. This is the case because the toll is levied against a ship on the basis of the vessel's hull size, rather than on the amount of cargo carried. Containerships are particularly hard hit, due not only to the substantial tolls they pay, but also because of their high operating costs.

It is obvious that use of the Canal by Association members, as well as other vessels, must in some respect reflect the level of Canal tolls. The toll increases since 1974 and the prospect of virtually unlimited future increases make it increasingly difficult for vessels to use the Canal. Repeated large increases in tolls must inevitably decrease Canal usage, creating a never-ending spiral of decreasing usage and increases in tolls.

Clearly, unlimited increases in Canal tolls would have an adverse effect upon shipping and trade. First, increased tolls will be a factor in discouraging trade generally. Second, basic commodities (such as bulk grain and coal) exported from the United States will suffer a weakened competitive position compared to commodities which do not transit the Canal.

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The members of the Association are major users of the Panama Canal, and hope to be able to use the Canal as they have in the past. This hope can be realized to its fullest only if stabilization of Canal tolls can be insured in the pending legislation.

Sincerely,

T. Miura

Takashi Miura,
For The Japanese Shipowners'
Association

conasa

Officers
Francis H. Muldoon, *President*
Arthur Lane, *Exec Vice President*
Rexford Wheeler, *Vice President*
George C. Garris, *Treasurer*
Thomas P. Kelly, *Secretary*
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Chief Counsel
Francis A. Scanlan, *Esquire*

Co-Counsel
A. Adgate Duer, *Esquire*
Braden Vandeventer, *Esquire*

Panama Canal

March 9, 1979

Honorable Carroll Hubbard, Jr.
Chairman
Panama Canal Sub-committee
Committee on Merchant Marine and Fisheries
House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Hubbard:

The Council of North Atlantic Shipping Associations (CONASA) is an organization of maritime associations operating in the North Atlantic Ports of Boston, Providence, Philadelphia, Baltimore and Hampton Roads.

CONASA is very much interested in the implementation legislation involving the Panama Canal. CONASA is aware that this Sub-committee is receiving a tremendous amount of divergent testimony concerning that legislation. As an organization, CONASA generally follows the approach which will be presented by Richard A. Lidinsky, Jr., Esquire, Chairman of the North Atlantic Ports Association Panama Canal Committee. However, CONASA strongly feels that Congress should adopt an annual ceiling for future tolls. CONASA proposes that Congress should adopt a five percent maximum annual ceiling. CONASA believes that such a ceiling is reasonable to cover any additional expenses which the Panama Canal Commission potentially might incur. At the same time, CONASA is of the opinion that any ceiling on tolls which would exceed five percent annually would be economically disastrous to the North Atlantic Ports.

If you need any further information concerning CONASA's position, we will be glad to provide it to you.

Yours very truly,

Francis A. Scanlan

Francis A. Scanlan
Chief Counsel

council of north atlantic shipping associations
Suite 600, Lafayette Building, Philadelphia, PA 19106 — (215) 922-7510

Council of
American-Flag Ship Operators
1625 K STREET, N.W., SUITE 1200 · WASHINGTON, D.C. 20006
TELEPHONE: 202-466-5388
TWX: 710-822-1163 "CASO WSH"

March 15, 1979

Honorable Carroll Hubbard
Chairman, Subcommittee on the
Panama Canal
Merchant Marine and Fisheries Committee
United States House of Representatives
204 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Hubbard:

The Council of American-Flag Ship Operators (CASO) has a significant interest in the legislation which is now before your Committee to implement the Panama Canal Treaty of 1977. CASO is a national association representing United States flag liner operators. CASO members own and operate 151 vessels in the foreign trade of the United States, and are significant users of the Canal. One of our member companies alone made 57 transits of the Canal during 1978, paying tolls of 1.3 million dollars.

Recognizing that your Committee has a limited amount of time in which to act on this legislation and that our concerns lie principally in the area of tolls, we have not sought to appear before the Committee to testify. We do, however, respectfully request that your Committee give our views in this area its full consideration.

When the Senate was considering the Treaties last year CASO, and its then Chairman, Mr. W. J. Amoss, Jr., President of Lykes Bros. Steamship Company, Inc. submitted letters to the Foreign Relations Committee (see Hearings, Committee on Foreign Relations, Executive N, 95th Cong., First Sess., Part 4, pp 595 - 597). Your Committee has heard recently from Mr. Amoss in his capacity as Chairman of the New Orleans Steamship Association. We have studied his testimony and believe that it accurately, and emphatically, states the importance of the issue of toll levels to the future of the Canal. We endorse that testimony wholeheartedly.

Honorable Carroll Hubbard
March 15, 1979
Page 2

If the Panama Canal is to survive as a viable commercial entity, one which will be of any significant value to the Republic of Panama in the year 2000, your Committee must make every effort to insure that the toll structure is not artificially burdened. Tolls should reflect only direct operating expenses (including necessary replacement or improvement) plus a reasonable profit on net revenues. Tolls should not be burdened with interest payments to the Treasury on the United States investment in the Canal, depreciation, amortization of use rights, or capital improvements beyond those necessary for continued operation in the present mode.

Your Committee has been told that the present "windfall" revenues generated by movement of North Slope oil through the Canal may well dry up by 1982. Your Committee has also been told that toll levels are not purely elastic, that as toll levels rise beyond a finite point traffic will decrease until a time is reached when any increase in tolls would result in a net loss in revenues. We cannot predict the future. Both of the forgoing are, however, facts which cannot be disputed and raise a specter of serious problems for the commercial viability of the Canal if toll rate increases are not controlled.

CASO also supports the view that members of the Panama Canal Commission should be chosen from those industries and geographical areas which are so vitally dependent on continued sound commercial operation of the Canal. This is eminently logical, and should not be the subject of serious dispute or disagreement.

We thank you for your consideration of our views in this matter and stand ready to assist you and the Committee if we can be of any help during your deliberations on this legislation.

We respectfully request that our views be made a part of the record.

Sincerely,

Albert E. May

Albert E. May
Executive Vice President

AEM/pc

Thomas W. Gleason, President
Harry R. Hasselgren, Secretary-Treasurer
John Bowers, Executive Vice-President
Fred R. Field, Jr., General Organizer
Anthony Scotto, Vice-President and Legislative Director

STATEMENT IN BEHALF OF

THOMAS W. GLEASON, PRESIDENT
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

BY

ANTHONY SCOTTO
VICE PRESIDENT AND LEGISLATIVE DIRECTOR
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

TO THE

PANAMA CANAL SUBCOMMITTEE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

ON HR 111 AND HR 1716,
THE PANAMA CANAL ACT OF 1979

MONDAY, MARCH 12, 1979

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION • AFL-CIO • CLC
815-16th STREET, N.W. • WASHINGTON, D.C. 20006 • (202) 628-4546

The International Longshoremen's Association, AFL-CIO (ILA), files this statement before the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee to express its views on HR 111 and HR 1716, proposals for implementing the Panama Canal Treaty of 1977 and Related Agreements.

Overall, the ILA supports HR 111 for reasons outlined in this statement relating to those issues that directly affect the interests of its members.

The ILA represents approximately 100,000 longshoremen and other waterfront craft workers from Canada to Texas on the Atlantic Coast, the Gulf Coast, and in the Great Lakes. It also represents longshore workers in Puerto Rico and other ports in the Caribbean. These workers are employed in the day-to-day loading and discharging of vital ocean cargoes and handling of ocean-going vessels that are integral to the foreign and domestic seaborne trades of the U.S.

I. THE INTERESTS OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

The ILA has always supported maximum utilization of the Panama Canal for it is in the national interest that this vital waterway operate effectively. More importantly, it is in our best economic interests that the waterway operate at toll levels that will encourage ocean trade, particularly by American-flag carriers, as well as general cargo and container carriers in the foreign trades.

As high-value cargo transits through the Canal decline, the economies of American port cities become seriously threatened. But more importantly, the American-flag merchant marine, the largest user of the Panama Canal, will be impeded to a greater extent by uncontrolled and capricious tolls.

II. COMPARISON OF DIFFERING POSITIONS IN HR 111 AND HR 1716

A. Panama Canal Consultative Committee

HR 111, the implementing proposal introduced by Chairman John M. Murphy, establishes a Panama Canal Consultative Committee (Title I, section 105) to advise the U.S. Government and the Government of Panama on matters of policy affecting the operation of the Canal during the transition period. The committee make-up as outlined in Cong. Murphy's bill will be five U.S. representatives and five Panamanians, serving without compensation.

We generally prefer the language in HR 111 since it gives the private sector a role in the administration of Canal operations, while HR 1716 solely provides for U.S. government officials, coordinated by the Secretary of State, to administer operations during the transition period.

The ILA, together with the Council of North Atlantic Shipping Associations, (CONASA), in 1976 recommended to this Subcommittee to consider the creation of such an advisory council on policy matters, including general tolls policy, consisting of a representative of carriers, ports, employer groups, as well as all labor organizations with a vital interest in the Canal.

B. Prescription of Measurement Rules and Rates of Tolls

We have reviewed the two separate chapters in HR 111 and HR 1716 having to do with tolls (Title I, sections 411-414; and Title II, sections 230-232, respectively) and, in general, believe that HR 111 will far better accomplish the Committee's objective in containing excessive tolls that could be economically harmful to the U.S.

We particularly note section 413(b) of HR 111 which clearly addresses the procedure for interested parties in the case of a change in rates of tolls or rules of measurement which states, in part, that:

> After consideration of the relevant matter presented, the Commission may revise the proposed rules of measurement or rates of tolls, as the case may be, except that, in the case of rates of tolls, if such revision proposes rates greater than those originally proposed, a new analysis of the proposed rates shall be made available to the public, and a new notice of the revised proposal shall be published in the Federal Register apprising interested persons of the opportunity to participate further in the proceedings through submission of written data, views, or . . . participation in a public hearing to be held not less than thirty days after the date of publication of the new notice. The procedure set forth . . . shall be followed for any subsequent revision of the proposed rates by the Commission which proposes rates higher than those in the preceding proposal.

We believe this section to be of paramount importance in light of the fact that excessive tolls could undermine the economic viability of the Panama Canal by diverting ships to other routes or other modes of transportation, and in addition, it serves to protect U.S. East and Gulf Coast port operations from further cargo diversions, particularly in light of new cargo exports and imports anticipated with the re-establishment of U.S. trade relations with the People's Republic of China.

We unequivocally support this safeguard statement and commend Chairman Murphy for discerning the importance of such a provision. In this regard, we wholly differ with the language set forth in HR 1716 which does not give the public a subsequent opportunity to participate further in rate change proceedings, stating simply that after advance notice of up to three months (in the Federal Register) of a proposed change, that any action taken by the President shall be considered final.

Since 1974, following three successive rate increases which added almost 50 percent to the cost of vessels using the Panama Canal waterway system, transits through the Canal have steadily declined at an alarming rate. A fresh boost of some 25 percent, which is the figure estimated by expert economists to satisfy immediate payment requirements to Panama under the treaties, will only serve to accelerate diversion of cargo ships still utilizing this international waterway. Any further loss in trade through the Panama Canal will, unfortunately, have effects far beyond the Canal Zone since the waterway is an integral element in the vast flow of U.S. foreign commerce that moves through Atlantic and Gulf Coast ports to all areas of the world.

Rather than raising additional revenues, excessive tolls will result in fewer ships using the waterway as freight shippers turn to alternative methods of moving sea-borne commerce. Alternative transport, such as the cut-rate Trans-Siberian Railroad operated by the Soviet Union, or the mini-bridge system, the practice of moving international containerized cargo by direct land-water routes instead of the all-water route through the Panama Canal, will largely benefit from increased tolls because the Canal will inevitably lose its competitive edge.

Moreover, the ILA endorses the position taken by the Atlantic-Gulf Ports Coalition, an ad hoc committee of port officials and waterfront employer groups from Maine to Texas, that implementing legislation to the Panama Canal treaties contain provisions that a percentage limit be set on future toll increases to insure toll stability since any further decline in vessel traffic necessarily translates into serious loss of job opportunities for the workers that the ILA represents.

There is, therefore, good and sufficient reason for our belief that excessive toll increases will further discourage the movement of cargo through the Panama Canal and, in our view, will have an eventual negative effect on the revenue-producing capacity of Canal operations.

III. ALTERNATIVE MODES OF TRANSPORTATION

The most divisive single issue now facing ports, ocean carriers, stevedores, dock labor and others is the minibridge system of movement. The gradual shift of moving cargoes, and specifically containerized cargoes, by means of a joint rail-water service instead of the all-water route through the Canal, is causing an alarming decline of foreign trade in many U.S. Atlantic and Gulf Coast ports.

It means that the Panama Canal is totally avoided and American cargo moves without payment of any tolls. At present, tariff rates for cargoes moving via minibridge are either the same or less than rates for moving cargo via the Panama Canal to or from the U.S. East Coast. It stands to reason that excessive tolls therefore will only serve to accelerate minibridge movements.

In fact, Chairman Murphy shared our concern when, during hearings last year before his Committee, he cautioned that East and Gulf Coast cargoes "are and will continue to be susceptible to the sensitivity of tolls" due to alternative modes of transportation "such as the landbridge."

Data provided by the Panama Canal Company reveals that transit of the Canal declined following the three previous rate increases, which added nearly 50 percent to the cost of ships using the waterway system.

In 1975, there were some 15,000 canal transits; the following year, transits decreased to 13,000. In the same period, toll revenues decreased from $143 million to $135 million; while net tonnage decreased from 135 million canal tons to 129 million canal tons.

Of the approximately 142.5 million long tons of ocean-going cargo which moved in fiscal year 1978, 72.5 million tons were tons moving from or to the United States and each of its seacoasts. In the same period, a little over 12,600 transits were made through the Canal. The last three toll increases are beginning to have their adverse effect on liner cargo transits. Obviously, liner operators are looking for another method of moving cargo.

What are these other methods of movement? Canal Zone transits are presently affected by the following:

A. Minibridge:

   (i) Far East to and from East Coast with Continental U.S. transit by rail rather than by Canal,

   (ii) Eurocal Minibridge -- movements to and from California to Europe with Continental U.S. transit by rail rather than by Canal,

   (iii) Landbridge -- movement from the Far East with movements across the U.S. Continent by rail rather than by Canal, and

   (iv) Micro-bridge -- the concept of containers moving directly from midwest areas to the West Coast by rail for Far East shipment rather than through closer East Coast ports.

B. Far East to European Traffic

   (i) Movement through the Suez rather than through the Panama Canal,

   (ii) Trans-Siberian Railroad -- movement by rail from the Far East across the Soviet Union.

C. Use of the Straits of Magellan or the Cape of Good Hope.

Of all the above, those which impact the American economy the most are minibridge movements. Here the Panama Canal is totally avoided and American import and export cargoes can move without payment of any tolls. Millions of tons of cargo have been, and will continue to be, diverted to minibridge, a practice which is having an adverse economic impact on ILA East and Gulf ports.

At the present time, the tariff rates for cargoes moving via minibridge are either the same, or less than, rates for moving cargo via the Panama Canal to or from the East Coast. Similarly, other cargoes now moving by the Canal will move to the Suez or Trans-Siberian Railway system operated by the Soviet Union. In fact, the Soviets reported recently that they are very confident that transit shipments by the Trans-Siberian route will steadily increase. Approximately 76,000 20-foot containers crossed Soviet territory last year.

U.S. inter-coastal traffic will be unable to compete with rail, and could all but disappear except possibly to Puerto Rico and the Caribbean islands, and in the Alaskan oil trade. The importance of the Canal to the U.S. and its allies requires its continued availability at tolls competitive with the above alternate methods of cargo movement. Moreover, the world shipping industry must be assured of the profound interest of the U.S. in protecting such availability and rate stability into the far future.

It is essential that the inter-coastal services of the United States always be encouraged, and many attempts are being made to accomplish this. When a ton of vital commodities can move from one U.S. coast to another with approximately half the fuel consumption necessary to move the same cargo by inland transportation, the ultimate effect on the conservation of energy is evident.

However, excessive increases in Panama Canal tolls could and would adversely affect any plans for an effective, economic utilization of this important waterway, for too many increases may well mean the end of inter-coastal traffic. This result would be a devastating one for the United States maritime industry.

We wish to thank you for giving the ILA this opportunity to express our views on HR 111 and HR 1716 and stand ready to meet with you or your staff relative to our position as stated.

Respectfully submitted.

Anthony Scotto

Anthony Scotto
Vice President and Legislative Director
International Longshoremen's Association
March 17, 1979

APPENDIX

1. SINCE THE BASE FOR CANAL TOLLS IS A REFLECTION OF VARIOUS COSTS WHICH MAY BE ATTRIBUTED TO CANAL OPERATION OR DEFENSE, WHAT SUGGESTIONS DO YOU HAVE AS TO THOSE ELEMENTS WHICH SHOULD BE INCLUDED OR EXCLUDED IN THE TOLLS BASE? WHAT PROSPECTIVE COSTS CAN BE REDUCED OR ELIMINATED?

In April of 1976, the International Longshoremen's Association (ILA) filed a joint statement with the Council of North Atlantic Shipping Associations (CONASA) to the Panama Canal subcommittee on financial questions affecting Panama Canal. We reiterate the following which we recommended then and which we believe still hold merit if these accounting practices, as we understand them, could be eliminated and reduce the amount to be assessed against tolls.

Depreciation. The depreciation practice of the Panama Canal Company in charging depreciation against land, titles, excavations and treaties, should be reversed. No such charge was levied in the period from 1914 to 1974. Cost what it may, the Company then began to depreciate such properties, valued at some $333 million over a 40-year period. The $8.3 million depreciation taken in each fiscal year since 1974 now amounts to $49.8 million, a figure exceeding losses to date. In brief, take away the depreciation and there is no loss.

Charges and Allocations. There are two charges which we believe should be eliminated from the Panama Canal accounts. One of these is a reserve for bad debts. The reason this charge should be eliminated is that all carriers using the Canal are required to either pay tolls in advance or establish appropriate deposits for payment. Not one penny of the bad debts carried by the Panama Canal Company are attributable to a single carrier. Second, the Statute (Title II, Canal Zone Code 412) provides that tolls are to be used to pay " . . . only an appropriate share of the net costs of the operation of the agency known as the Canal Zone Government."

Interest. It is recommended that legislative changes be made to eliminate interest charges to the U.S. Treasury in order to permit a stability of toll rates.

2. DO YOU HAVE ANY SUGGESTIONS AS TO THE TYPE OF TOLLS STRUCTURE THAT WILL BE APPROPRIATE UNDER THE REGIME TO BE ESTABLISHED IN THE CANAL TREATY IMPLEMENTING LEGISLATION?

We agree with provisions of section 412(a) of HR 111 which, in effect, continues the present toll structure in operation, which states:

> Tolls on merchant vessels . . . shall be based on net vessel tons of 100 cubic feet each of actual earning capacity determined in accordance with the rules for the measurement of vessels for the Panama Canal and tolls on other floating craft shall be used on displacement tonnage. The tolls on vessels in ballast without passengers or cargo may be less than the tolls for vessels with passengers or cargo.

3. WHAT IS YOUR VIEW AS TO THE MERITS OF THE PROVISIONS IN HR 111 AND HR 1716 RELATING TO PROCEDURES FOR TOLLS ADJUSTMENTS AND CHANGES IN MEASUREMENT RULES?

In our prepared statement on Page 3 we address this question in detail. Clearly, section 413(b) of HR 111 is worthy of our support.

4. HOW SHOULD THE CONCERNS OF THE PORTS AND THE MARITIME INTERESTS OF THE UNITED STATES BE REFLECTED IN THE DECISION-MAKING STRUCTURE FOR CANAL MATTERS?

We believe that the concerns of ports and other maritime interests, including maritime labor, would be served best by having at least three persons comprise the Panama Canal Consultative Committee, with full authority to advise and consult before any major determinations are made. Please see page two of our statement which addresses this question.

5. WHAT IS THE RELATIVE EFFECT OF THE PROVISIONS OF HR 111 AND HR 1716 CONCERNING CLAIMS PROCEDURES? WOULD THE PROVISIONS OF EITHER BILL HAVE ANY EFFECT ON DECISIONS OF WATER CARRIERS TO USE THE CANAL?

We respectfully defer this query to the water carriers who employ the Canal.

6. WHAT IS YOUR VIEW OF THE PROVISIONS IN HR 111 AND HR 1716 FOR THE INSPECTION OF VESSELS TRANSITING THE CANAL? ARE REGULATIONS SIMILAR TO THOSE GOVERNING MARINE INSPECTION BY THE UNITED STATES COAST GUARD SATISFACTORY TO ALL USERS?

The Panama Canal Pilots Branch of the International Organization of Masters, Mates and Pilots (IOMM&P), an affiliate of the International Longshoremen's Association, recently testified before this Committee their support of Section 1353 of HR 111, entitled "Regulations Governing Inspection." The Canal Pilots stated that a "high standard of vessel inspection is essential to a continued safe and efficient operation in the Panama Canal." The ILA wholly concurs.

7. WHAT SUGGESTIONS DO YOU HAVE FOR ACCOUNTING POLICIES OF THE COMMISSION, INCLUDING THE ACCOUNTING FOR PAYMENTS TO PANAMA?

The importance of the Canal to the U.S. and its allies requires its continued availability at tolls competitive with alternate methods of cargo movement. Moreover, the world shipping industry must be assured that the Canal's use and availability is protected and provided for into the far future. In this regard, we generally agree with section 234 of HR 111 apart from those recommendations we made in response to appendix question #1 herein.

STATEMENT OF
INTERNATIONAL COMMITTEE OF PASSENGER LINES
BEFORE THE SUBCOMMITTEE ON PANAMA CANAL
OF THE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES
ON LEGISLATION TO IMPLEMENT THE PANAMA CANAL TREATY

The International Committee of Passenger Lines (ICPL) is made up of the 16 major foreign-flag passenger and cruise lines named in the attached list. These lines operate a combined total of some 50 passenger vessels in foreign commerce of the United States, both directly and in the cruise trade. These vessels pay approximately 70% of all tolls for passenger ship transits of the Panama Canal.

In recent years there have been approximately 135 such transits each year. Our Member Lines have reason to believe that this figure can be increased, since it is only recently that a Canal passage has become an important factor in cruise promotion to the area. Now, more than ever, this will be a prime objective of the Republic of Panama, which has previously expressed interest in expanding its annual earnings from shore expenditures by the some 90,000 passengers and 45,000 crew members aboard passenger vessels.

However, this expectation of increased transits can be realized only if the new Panama Canal Commission succeeds in providing efficient operation at a reasonable and predictable level of Canal tolls fixed so as to maximize traffic. In view of substantial investments involved in cruise ship operation, long-term planning is an essential aspect of the cruise industry -- and it is therefore vital that future toll costs be predictable. This is why ICPL is particularly interested in those provisions of the two Bills before your Subcommittee which relate to the procedure for (a) prescribing changes in vessel measurement rules and (b) adjusting the overall toll charges.

It is worth pointing out that the measurement rules for passenger vessels were changed in 1976 so as to bring about an approximate 40% increase in costs to the ship operators, without any change in the toll rates, as opposed to only 7% for all other types of vessels. This 40% increase was the result of including in the tonnage measurement certain shipboard public room areas which had previously been excluded. In addition, the rate increases in 1974 and 1976 caused the total transit charges for passenger vessels to increase by almost 100% in the last 5 years. Governor Parfitt of the Canal Zone has testified before your Subcommittee that enactment of H.R. 111, which includes in the toll base provisions for interest, amortization of investment, and an early retirement program, would require another toll increase of about 35%. On the other hand, the Administration's Bill (H.R. 1716) would necessitate an estimated increase of only about 14%. In the view of ICPL any increase in the order of 35% could only be counterproductive, since it would divert present and potential passenger vessel traffic to other cruise areas. This, in turn, would require increasing tolls to other users of the Canal to offset such loss of revenue. Mr. Brandes of International Research Association has testified that, based on his traffic and revenue study, toll increases exceeding 50% are likely to result in reduced revenue. ICPL supports this conclusion and therefore urges adoption of the provisions of H.R. 1716 concerning the elements to be included in the toll base.

Annexed to this statement is a copy of ICPL's letter dated January 27, 1978, which reviews in detail the effect of Canal toll increases (1974-1976) and of a projected 30% increase as a result of the Canal Zone Treaty.

ICPL endorses the procedural provisions of H.R. 111, which require that proposed toll changes may become effective only after public notice, hearings and Presidential approval. These requirements provide a necessary safeguard against action by the new Panama Canal Commission without notice to, and consultation with, the various Canal users. ICPL also supports the proposal made by Mr. Kujawa of Arthur Andersen & Co. which would require public reporting of the audits made by the General Accounting Office. Such a requirement would make it possible for users to assess more accurately the efficiency of the Canal's operation under the new Panama Canal Commission.

As to make-up of that Commission, ICPL agrees with the suggestion of the Gulf Ports Association that at least some of the U.S. members of the Commission be businessmen who can speak for the steamship industry and that these appointments be made as provided in Sec. 101 of H.R. 1716. One of the essential purposes of the new legislation is to create a Commission which will operate the Canal in an efficient and business-like manner, and we respectfully suggest that government officials have no monopoly of managerial talent.

Finally, this Committee favors H.R. 1716's provision which would remove the present $60,000 limit on the administrative settlement of claims for damages occurring outside the locks. This $60,000 figure, dating back to 1951, in no way reflects current inflationary trends, and there is no reason to place such a restrictive limitation on the new Commission's settlement authority.

In conclusion, ICPL believes that the form of the legislation ultimately enacted to implement the 1977 Panal Canal Treaty will have a vital impact on the Canal's operation in the years to come. It is sincerely hoped that adoption of the suggestions above set forth will make it possible for this great international "path between the seas" to continue to operate efficiently and at reasonable cost to vessels of all types and of all flags.

Dated: March 16, 1979

Respectfully sumbmitted,

NEW YORK COMMITTEE OF INTERNATIONAL
COMMITTEE OF PASSENGER LINES

JOHN H. REURS, CHAIRMAN
NEW YORK COMMITTEE

Prepared by John H. Reurs, who is registered with the Department of Justice, Washington, D. C., under the Foreign Agents Registration Act as agent for the New York Committee, International Committee of Passenger Lines, as foreign principal. A copy of the Registration Statement and of this statement are filed with and available for inspection at the Department of Justice. Such registration does not indicate approval of the contents by the U. S. Government.

LIST OF MEMBERS

INTERNATIONAL COMMITTEE OF PASSENGER LINES

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CHANDRIS AMERICA LINES
COSTA LINE
CUNARD LINE
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SITMAR CRUISES
SUN LINE

1/1/79

INTERNATIONAL COMMITTEE OF PASSENGER LINES

NEW YORK COMMITTEE
25 BROADWAY
NEW YORK, N. Y. 10004
TELEPHONE: 212 269-2822
CHAIRMAN. JOHN H. REURS

January 27, 1978

The Honorable Harold R. Parfitt
President
The Panama Canal Company
Balboa Heights, C. Z.

Dear Governor Parfitt:

Re: 35 C.F.R. 135.286
Measurement Rule for Public Rooms
on Passenger Vessels

As Chairman of the New York Committee of the International Committee of Passenger Lines, which is made up of the major foreign-flag passenger cruise lines named on the attached list, I herewith respectfully submit the following comments and recommendations on the captioned subject for your consideration.

Recent testimony by public officials and representatives of maritime interests at Congressional hearings, and elsewhere, addressing the economic aspects of the new Panama Canal Treaty, has caused considerable anxiety among the members of our Committee (ICPL). I refer in particular to the statements by senior Government officials to the effect that substantial toll rate increases will be unavoidable if the economic terms of the new Treaty are to be fullfilled.

Needless to say, the prospect of yet another substantial toll rate increase - projected at 30 to 40 percent - is grim indeed to an industry which has not effectively been able to adjust to the impact of the 1974- and 1976 toll rate increaes, not to mention the Measurement Rule changes adopted in 1976.

As the record will show, our Committee submitted testimony at the hearings held by the Board of Directors of the Company in October 1975 on the subject of proposed revision of the Measurement Rules, and in August 1976 on proposed toll rate increase of 19.44%, to document the exceptionally heavy financial burden placed on passenger vessels, versus all other categories of vessels using the Canal,We also submitted data to substantiate our claim that the change in the Measurement Rules, and specifically the revocation of 35 C.F.R. 135.286 (Measurement of Public Rooms on Passenger Vessels), was responsible for causing a very large disparity in the increase of transit fees for passengervessels as compared to all other categories of vessels. The documentation submitted at that time demonstrated that the change in Measurement Rule 135.286 impacted the tolls actually paid by passenger ships by an average of 39.7%, versus and impact of only some 5% for Measurement Rule changes applicable to all other categories of vessels.

In this context it should be noted that while estimates made by the Panama Canal Company in its study of the Measurement Rules, published in 1975, indicated that passenger vessel tolls would be impacted by some 28%, a subsequent compilation of the transit fees actually paid by our members for their passenger vessels prior to, respectively following the adoption of the new Measurement Rules in 1976, demonstrated that the average impact was 39.7 % , although some passenger vessels were impacted by as much as 49.4 % due to the public room rule alone.

In view of the fact that our earlier testimony fully documented our position in favor of reinstatement of the "old" Measurement Rule 135.286, it would be redundant to repeat our brief at this time. We therefore respectfully refer all concerned to the record of the hearings, and our related correspondence with the Secretary of the Panama Canal Company, Mr. Thomas M. Constant.

However, with a view to the toll rate increase currently under consideration to meet the economic stipulations of the new Treaty, we feel we must urgently repeat our request for reinstatement of the "old" measurement rule, 35 C.F.R. 135.286, which is applicable to passenger vessels only, and therefore affects no other category of vessel.

To give perspective to the deeply serious situation facing the passenger cruise lines, we have prepared, and attach hereto, an updated version of the document attached to our letter of July 15, 1976, which fully illustrates the dramatic, financially damaging impact, on the two toll rate increases adopted in 1974 and 1976, of the Measurement Rule changes, and the prohibitive increases which would obtain should a 30%-or more- toll rate increase be instituted upon ratification of the Treaty

It will be noted from this document that the average transit fees paid for passenger vessels have already been increased by 100% since 1974, whereas this figure will escalate to 160% should tolls increase further by 30%. In short, the measurement rule change for passenger ships compounds past and future toll rate increases by a factor of 39.7 percent, against only 5% for all other vessels. For instance, a 20% toll rate increase escalated by a factor of 1.397 for passenger ships, but by only 1.05 for all other vessels.

Expressed in dollars, the transit fee in 1973 for an average size ICPL passenger vessel increased to an astronomical fee of $29,566 in 1978, from $14,766 in 1973. The Queen Elizabeth 2, on its most recent transit earlier this month was levied almost $70,000 in tolls alone (excluding other charges for tugs etc.), whereas in 1973 the same vessel would have been charged $35,060. Should tolls increase by another 30%, the cost of a QE2 transit would increase to some $88,000. On a cruise to the Pacific and return this latest increase would escalate operating cost of the vessel by some $42,000, which would increase the transit cost per passenger to approximately $175., up from $135, roundtrip.

It hardly requires elaboration that such dramatic increases within a period of less than 4 years cannot be passed along to the passenger, or be absorbed by the vessel owner; the Lines operating such vessels must therefore unavoidably consider rescheduling the vessels to other itineraries. Since the vessels operate on cruises, not point to point transportation, such rescheduling does not create major problems, other than to deprive the passengers of the privilege, pleasure and educational value of actually seeing one of the unique engineering wonders of the world. This saddening consequence, far from being in any way intended as a threat, is the involuntary confrontation of harsh economic reality. It is all the more regrettable because the shipping lines recently undertook a market-creative program to increase the number of cruise voyages through the Canal, including so-called half-transits whereby a vessel proceeds part way through the Canal to give passengers an opportunity to see the complex facility in actual operation.

Although Canal transits have always had strong appeal to passengers - even repeaters - it is only recently that the attraction of the Canal itself has become a factor in tourist promotion. The impact of such promotion will primarily be felt in the future, which would certainly be of considerable interest to and a prime objective of the Republic of Panama, which has expressed interest in expanding its earnings from tourism stemming from shore expenditures by passengers and crew from vessels docking at either Cristobal or Panama prior to, or upon completing a Canal transit.

Since the impact of the Measurement Rule for Public Rooms on Passenger Vessels is unique to vessels in this category, we respectfully submit that it would be in the best interests of the travelers, the Panama Canal Company, the passenger cruise lines and the Republic of Panama if the "old" measurement rule for public rooms were to be reinstated, and the current rule revoked. It is clear that this would not affect the measurement or transit fees of any other category of vessel. However, the impact would be to protect the economic viability of Canal transits by passenger cruise vessels which would most probably increase from a total of approximately 135 per year, thereby not only protecting the Canal Company against revenue loss, but setting the stage for expansion of passenger transits and higher revenue.

Conversely, the loss of passenger vessel transits and revenue, stemming from a decrease in passenger traffic due to transit cost increases of 100 to 160%, would have further consequences of requiring future toll rate increases for the other users of the Canal to offset the loss of passenger revenues.

We therefore respectfully, but urgently request that rule-making to reinstate 35 C.F.R. 135.286 be undertaken as soon as possible.

Our Committee is prepared to provide additional information or documentation as may be required.

We sincerely hope that the above will be granted favorable Consideration and we shall look forward to receiving your reply.

Sincerely yours,

JOHN H. REURS, CHAIRMAN
New York Committee of International
Committee of Passenger Lines

JHR:cs

Enclosure

SUMMARY OF FINANCIAL IMPACT OF PANAMA CANAL COMPANY 1974-1978 TOLL INCREASES AND MEASUREMENT RULE CHANGES ON ICPL PASSENGER VESSELS

LEVEL OF PANAMA CANAL TOLLS

	$ Per Panama Canal Ton	Index
Prior to 1974	$ 0.90	100.00
1974 Toll Rate Increase (20%)	0.18	
	$ 1.08	120.00
1976 Toll Rate Increase (19.44%)	$ 0.21	
	$ 1.29	143.33
1978 (Est.) Toll Rate Increase ((30%)	$ 0.387	
	$ 1.677	186.33

* * * * * * *

CALCULATIONS SHOWING AVERAGE PANAMA CANAL NET TONNAGE AND TRANSIT TOLLS FOR ICPL PASSENGER VESSELS BASED ON:

	PCC VESSEL TONNAGE CERTIFICATES - OLD MEASUREMENT RULES	(Index 1973=100)	PCC VESSEL TONNAGE CERTIFICATES - NEW MEASUREMENT RULES (39.7%Increase)		ESTIMATE[Δ] BY PCC OF IMPACT OF NEW MEASUREMENT RULES ON PASSENGER VESSELS (28% Increase)		ESTIMATE[Δ] BY PCC OF IMPACT OF N MEASUREMENT RU ON ALL TYPES O VESSELS (7% Increase)	
Average PCC Tons per ICPL Vessel * :	16,407		22,920		21,000		17,555	
Level of Tolls:								
1973 @ $0.90:	$14,766	(100)	n.a.		n.a.		n.a.	
1974-1976 @ $1.08:	$17,720	(120)	$24,754	(167.6)	$22,680	(153.6	$18,959.	(128.4
1976 @ $1.29:	$21,165	(143.3)	$29,566	(200.2)	$27,090	(183.4)	$22,646	(153.3
% Increase 1973-1976:	43.3%		100.2%		83.5%		53.4%	
1978 (EST.@$1.68	$27,563	(186.3)	$38,505	(260.2)	$35,280	(238.4)	$29,492	(199.3
% Increase 1973-1978	86.6%		160.7%		138.9%		99.7%	

Δ Source: pp.46 of "proposed Changes in Rules for Measurement of Vessels for the Panama Canal", a Report of the President of the Panama Canal Co. to the Board of Directors, July 11, 1975.

Average Measurement in PCC Tons per vessel of all ICPL vessels Scheduled for P.C. transits in 1976/1977

TRANSPORTATION ASSOCIATION OF AMERICA
SUITE 1107 • 1100 17TH STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 296-2470

PAUL J. TIERNEY
PRESIDENT

March 30, 1979

Honorable John M. Murphy
Chairman
House Merchant Marine and
Fisheries Committee
Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Murphy:

During the final markup by your Committee of legislation to implement the Panama Canal Treaties of 1977, we urge that special consideration be given to the provisions relating to future Canal tolls so that, insofar as practicable under the terms of the Treaties, they will be increased only to the extent necessary to meet costs that relate directly to operation of the Canal. This request is based on formal action taken by the 115-member TAA Board of Directors (see current roster attached), which has adopted the following policy:

> "Any new treaty concerning the Panama Canal should be accompanied by domestic legislation providing that tolls will increase only to reflect increased direct operating costs of the Canal itself.

TAA is a national policy organization of transport users, suppliers, investors, and carriers of all modes (air, motor, pipeline, rail, water and freight forwarder), who work together to develop policy positions aimed at creating and maintaining the strongest possible U. S. transportation system. Approximately 50 percent of our corporate membership falls within the shipper category, and a large number of these corporations engage in extensive international trade and are users of the Panama Canal. A glance at the attached TAA Board roster should enable you to identify many such corporations.

Our members believe that legislation to implement the Treaties should not require Canal revenues, through tolls, to bear costs of the political and social objectives of the Canal's transfer to Panama. However worthy these objectives may be, we believe such a policy would result in excessive tolls disruptive of trade patterns that depend on the Canal and injurious to shippers and carriers who have come to rely on the Canal as a cost-effective transport facility. Efficiencies inherent in the use of the Canal would be lost to significant segments of the maritime industries of both the U. S. and other nations.

We are pleased to note that both H.R. 111 and H.R. 1716 specify the costs that should be included in the Canal toll structure, which in most part are in line with TAA views. Our concern is that other, non-transportation costs not be included in the toll rate base; and we therefore hope that the members of your Committee will carefully review these provisions relating to future tolls to prevent such inclusion to the extent possible.

We thank you for your consideration of our views on this key feature of this legislation, and we request that this letter be made a part of the record.

Sincerely,

Paul J Tierney

PJT/js
Attachment
cc: Members of House Merchant Marine
and Fisheries Committee

[Whereas, at 4:30 p.m., the hearing adjourned to reconvene at 9 a.m., March 14, 1979.]

CANAL OPERATION UNDER 1977 TREATY

WEDNESDAY, MARCH 14, 1979

House of Representatives,
Subcommittee on the Panama Canal,
Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 340, Cannon House Office Building, Hon. Carroll Hubbard (chairman of the subcommittee) presiding.

Present: Representatives Hubbard, Lowry, Carney, and Murphy.

Staff present: Bernard Tannenbaum, special counsel; Terrence W. Modglin, staff director; Kenneth Merin, minority counsel; Merrill Whitman, special consultant.

Mr. Hubbard. The Panama Canal Subcommittee will now come to order.

This is the last day of hearings. Our first witness on the ninth and perhaps last day of the subcommittee hearings is Washington attorney Charles Maechling, Jr.

In December 1977, Mr. Charles Maechling gave testimony before this subcommittee on the international legal effects of the 1977 treaty arrangements.

He is a former State Department official and an authority on international law.

Mr. Maechling will benefit us by his presence today and we welcome him for his testimony

Mr. Maechling. Thank you, Mr. Chairman.

My statement has, I think, been circulated, and if I could ask that it be introduced in the record I will try not to read directly from it throughout but will rather address myself in a more informal and summarized way to the public issues and then go into more detail regarding the issues raised for outside contractors, third parties, and businesses.

Is that agreeable?

Mr. Hubbard. It is fine, no problem. It is so ordered.

[The prepared statement is included at the conclusion of the testimony of Mr. Maechling.]

STATEMENT OF CHARLES MAECHLING, JR., ATTORNEY, KIRLIN, CAMPBELL & KEATING, WASHINGTON, D.C.

Mr. Maechling. Mr. Chairman, my testimony is in two parts. The first relates to public issues. These have been so thoroughly covered by the administration witnesses and others that I almost hesitate to go over them and, therefore, I intend to discuss them in an informal way rather than reading right through the statement.

It does seem to me that basic issues are raised in the two bills that I have addressed, the administration bill and the Murphy bill, both introduced by Mr. Murphy who I am honored to see is present here today.

The two bills, are diametrically opposed in political and philosophical terms. Embedded in each are different philosophies for overall control, and that is the basic issue which will confront the committee.

I myself am somewhat of two minds about the basic philosophy, but I should say that once you decide which to choose everything else tends to fall into place.

The differences are such that on the all important question of control the administration bill basically provides for a corporate entity, so similar in legal form to the Panama Canal Company that really we are only talking about a name change from a legal standpoint; in fact, only the name change is necessary to make most of the company's organic legislation, as it is today, applicable to the new Panama Canal Commission.

Preserving the entity of the old Panama Canal Company does have the virtue of a great deal of legislative convenience and provides for easy administrative transition from one corporate mode to the other.

The administration bill is generally silent on the powers and functions of the Board. These will presumably be much the same as at present. However, the section-by-section analysis indicates that these functions and powers would be virtually identical with those of the present Board who, again, would be public officials presumably of the same rank of cabinet or subcabinet status as the present Board.

Now, the approach of H.R. 111 is substantially different. It takes a much tighter approach to the whole question of organization. In essence it would run the canal according to pre-1951 status and would make the new Commission an outright agency of the U.S. Government.

In so doing it seems to me inescapable that the Board would be substantially reduced in power. You could not really have a powerful Board, or a Board exercising a strong political voice, it seems to me, and have it subordinate to or under the direction, as is stated, of the Secretary of Defense.

Of course the Board of the present Corporation is also within the administrative policy orbit of the executive branch. So, perhaps we are to some extent talking about the form of things rather than the substance. But form is important, and the direct chain of responsibility is also important—the line of command. The straight agency approach gives a much tighter chain of command, much greater opportunity, as I pointed out, for both executive control and congressional oversight.

If I can move to the fiscal provisions: It seems to me that if you decide on a philosophy of the straight agency approach it would make absolutely no sense to have—and, in fact, would probably not be legal—the fiscal and financial arrangements administered under the government Corporation Control Act. It would simply be a contradiction in terms.

Conversely, if you had a government corporation, if that was ultimately decided on, it seems to me you would lose all purpose for having a government corporation—that is, the flexibility, particularly the financial flexibility—if you ended up with a system of straight appropriations with canal receipts remitted to the general fund of the Treasury.

So, in summary, I think a consistent approach is required. I believe that, if I can summarize my own view on this, from the standpoint of treaty interpretation and strong Executive control and congressional oversight the Murphy bill clearly has the advantage.

It also seems to me, though I have not put this in my statement, that it could be argued, perhaps persuasively, that a government agency was indeed meant in the treaty because it is somewhat illogical to create a Government corporation under a different name—going to all this trouble to make a break with the past, and then not actually make a substantive change and set up a Government agency.

The one factor that does trouble me—but not perhaps as much as it may trouble the Republic of Panama—is that the general scheme of gradually phasing out U.S. control and replacing it with a degree of Panamanian control, not necessarily in the strict legal or administrative sense but rather in the sense of policy participation, is to some extent reversed by translating the requirement in the treaty for a Government agency into a literal requirement for an appropriated fund agency. This seems to me to present a political problem, though it may be a nonproblem. I have not yet seen enough information from Panama to indicate which.

Now, in my discussion of fiscal administration, it seems to me to make no sense to be inconsistent. If it is to be a Government agency in the strict sense it must have regular authorized appropriations and have the canal receipts remitted to the general fund of the Treasury. And, as I have also said it would, to my mind, be a somewhat inconsistent approach to adopt the Corporation mode but at the same time have a system of Government appropriations and general receipts.

I have an additional recommendation, Mr. Chairman.

Section 204 of the administration bill and section 250 of the Murphy bill authorize payments to Panama by the Commission for providing certain public services in the canal operating and housing areas pursuant to paragraph 5 of article III of the Panama Canal Treaty; that is for police and fire protection, street lighting and cleaning, traffic management, and garbage collection.

Another provision authorizes the Commission to furnish the Republic of Panama with material services, water, and electric power at rates to be agreed upon by the Commission and Panama.

In other words, there are cross services to be provided and cross payments to be provided.

It seems to me that unless this provision in the treaty is some sort of concealed subsidy—which I hope it is not—since there are quite a number of other concealed subsidies in the treaty—that the residents and canal operating area personnel who will continue to be there are entitled to adequate, indeed excellent, police and fire protection, street lighting and cleaning, traffic management, and garbage collection.

Since we and will be in the situation of a U.S. corporation operating in a foreign country totally dependent on Panama for services I would like to see legislation to provide for complete cost accounting, both of the services to Panama and the services rendered back by Panama to the Panama Canal Commission, with provision for withholding payment or adjusting rates in the event the service is either deficient or nonexistent.

I turn now to a disposition of the property question which is a very knotty one and on which I confess I have somewhat reversed my original feeling. I had not realized that there was such a good case for joint action by both Houses of Congress in cases of this sort.

In all the texts on international law before this treaty came up it had been more or less taken as an article of faith that treaties were self-executing, and there was no legal or constitutional obstacle to the disposition of property. I checked several of the old texts and the question does not even seem to be raised. However, none of them appear to have drawn the distinction between adjstments of territory, corrections of boundary lines, trades or other situations where title to the property was not unequivocally vested in the United States, but where there might be an argument as to the title and where a treaty would settle the question—much as in the current Middle Eastern negotiations where a treaty is expected to settle the question of the proper boundaries of Arab and Israeli territory.

The legal arguments advanced in the memoranda that I have seen on this question in support of the position taken by the Murphy bill boil down to the fact that these past precedents in effect are not valid because none of them relate to property of the type that we have here to which the United States has unequivocal title

I therefore think that on this particular issue, unless some sort of a compromise can be worked out, ultimately only the Supreme Court can settle the question. It is clearly true that you cannot take a totally legal view of these things, that the Constitution has political and is intended to have political overtones, and the Constitution has been applied increasingly in recent years to require a vote of both Houses of Congress on important policy issues, whether they relate to U.S. intervention abroad or to the undoing of a treaty as in the case of Taiwan. So from a policy standpoint, and a view of the importance of the case, it might be well to have a joint vote of Congress.

The one new issue that I raise has no bearing on any views of mine but rather to the question of whether the Senate may be confronted with something of a dilemma as regards their prerogative of ratification. They have the sole power to advise and consent on treaties and may decide that this is indeed the type of a governmental action which can be effected by the Senate alone in a treaty. This may raise a question of the prestige of one House versus the other.

I now come to the external relations which are beyond the present legislation but perhaps should be included in it, section 2 of my statement. U.S. shipping companies and other firms hold leases and licenses for use of land located in the area to be transferred to Panama. The treaty is somewhat ambiguous but I think it is clear that both within the area that Panama will take over completely, and within the area reserved for Commission use until the year 2000, Panama will succeed to the rights of the lessor after the Panama Canal Company ceases to exist. Therefore, under the treaty, Panama will issue the licenses subject to what is provided for in the Agreement in Implementation.

Now, section 2 of article IX of the Panama Canal Treaty requires Panama to allow private business and nonprofit corporations to continue to operate in their premises for a 30-month transition period under the same terms and conditions prior to the entry into force. And section 1 of article IX prohibits retroactive application of Panamanian law except as specifically provided in article IV of the Agreement in Implementation.

The Agreement in Implementation, authorizing the commercial use of land within the operating area subject to joint agreement on land licenses and lease provisions, seems sufficient to validate the express provisions of canal land zone use licenses currently in force; it will still require clarification with respect to extensions and new licenses.

Some of the points that I make here follow in connection with these provisions.

First of all, the Canal Zone Government does not now, as a matter of policy, impose administrative fees and charges for preparation of land use licenses or leases. Can a commitment be obtained from the Republic of Panama that it will continue this practice? I am pessimistic. I have never known of a Latin American government that did not charge fees for preparation of virtually every piece of paper produced.

As to lease or licenses terms within the canal operating area: The treaty requires existing licenses to be confirmed and operating terms to remain unchanged during the 30-month transition period. After that they receive the same treatment as those already established in the rest of Panama without discrimination. I believe that within the canal operating area we appear to be adequately protected. Outside the operating area, after the 30-month transition period, Panama may provide for reasonable charges to be imposed for the use of the land.

Again, there has been no definition of the term "reasonable." I believe that there ought to be some mandate imposed on the executive branch requiring them right now to begin, through the established Commission, to negotiate an understanding with Panama as to some objective standard to be applied to insure that there is a mutual understanding as to what is reasonable what such charges are in fact reasonable.

I understand in the hearings down in Panama the Panamanians raised the question of retroactive taxes. It seems to me that these are almost expressly prohibited. I say almost because the language is, I believe, tight enough althought it does not address the matter in quite these terms. Section 2 of article IX seems to provide adequate safeguards against escalation or imposition of new taxes and other charges on businesses within the former Canal Zone during the transition period. Thereafter, contractors and businesses must rely on the proviso in section 1 of article I which reads that the law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to entry into force of the treaty only to the extent specifically provided in prior treaties and agreements.

I believe these provisions should settle the matter.

My next point relates to shipping. I have always been concerned about the lack of adequate safeguards for shipping in the access routes, to the canal.

By articles II and III of the Neutrality Treaty Panama has committee itself to the peaceful transit of the canal by vessels of all nations on terms of entire equality, subject (*a*) to rules and regulations that are just, equitable, and reasonable, and (*b*) tolls and other charges that are just, reasonable, equitable, and consistent with the principles of international law.

Annex A of the Neutrality Treaty defines the canal to include the entrance portions within the territorial sea as demarcated on map designated as annex B. Beyond this area the access routes to the canal are not otherwise protected.

Article XI of the Panama Canal Treaty provides that upon entry into force of the treaty in October 1979 Panama resumes plenary jurisdiction over the whole former Canal Zone.

There is a 30-month transition period that we all know about which only applies to the land areas. In the waters on either side of the canal, Atlantic and Pacific, U.S. jurisdiction is totally expunged and there is no 3-month transition period.

What this does is to expunge the former territorial sea of the Canal Zone which, of course, ran out to 3 miles under our present theory of international law pending revision in the Law of the Sea Conference. Jurisdiction over their area has now been totally transferred to Panama.

The problem here is that Panama has elected not to become a party to either the Territorial Sea Convention of 1958 or the High Seas Convention of 1958. It is one of the unilateral countries and it has declared a 200 mile territorial sea on both coasts. Panama has not enforced this extravagant claim but, as you know, within the territorial sea, from a legal standpoint, the rights of sovereigns are just as complete as they are on land. The territorial sea is, in fact, generally considered to be an extension of the sovereign's territory on land except for rights of entry and departure and innocent passage as defined in the Territorial Sea Convention of 1958—which all the maritime countries have signed but Panama has not.

This means that Panamanian jurisdiction is supreme within this area for purposes of rules of navigation, anti-pollution safeguards, innocent passage requirements and pratique—the enforcement of local sanitation and other local regulations—subject only to the moderation it chooses to exercise and the rights that are accorded to vessels of other nations by the Neutrality Treaty.

We do not recognize unilateral extensions of sea beyond 3 miles and we do not recognize the Panamanian 200-mile claim—but then we do not recognize the Ecuadorian or Peruvian 200-mile zone as they relate to fisheries and over the years have gone through the strange comedy of allowing our ships to be arrested and released, and tuna fishermen to be reimbursed. The United States, because of its Pan-American policy and a variety of other political imperatives has been reluctant to tamper with what remains of the Pan-American system and may well be reluctant to enforce what we conceive to be our rights within the 200 mile Panamanian sea.

I believe that it was a great mistake for the U.S. negotiators to fail to include a rollback of the Panamanian territorial sea claim as part of treaty negotiations—or, at least, to relate them in some way. Every question of mine to members of the administration was met invariably with the same economic self-interest argument; that is, it is in Panama's interest to allow a maximum degree of access to the canal so they can get maximum revenues.

Unfortunately, Third World countries constantly act against their own economic self-interest; not consistently, in the sense of permanently, but rather in periods of political turmoil. It seems to me that we cannot rely on the mechanism of self-interest of Panama indefinitely. Hence, we should try to assure ourselves, even belatedly, that fair and reasonable standards of regulation by Panama will apply in their territorial sea. If it is possible to negotiate an agreement or an understanding of even an informal character to this effect we should do so.

I will conclude.

There are three technical points on the question of liability for damages.

The present provisions to title II of the Canal Zone code of section 219 reduce damages payable by the United States for injuries to vessels in the locks only in proportion to the fault of the vessel and its crew. In short, the Canal Company is a virtual insurer of vessels within its total control. The administration bill would amend this currently prevailing condition to condition liability for injury to vessels in the locks on the negligence of Commission employees. This is now the rule prevailing as regards injury to vessels outside the locks.

This little noticed change could relieve the Commission, that is to say, the United States, of liability in each case where it brought forward proof to show that the injury to the vessel was not proximately caused by employees of the Commission. I do not believe it should be adopted. It runs counter to the whole principle of entrusting vessels to employees of the Canal Zone. I would continue in the future hold the Commission responsible while a vessel is in the locks.

The administration bill would continue to require proof of agency negligence for all claims of damage outside the locks. The Murphy bill would reauthorize the Commission to make settlement of claims up to $60,000 for nonmaritime claims and vessel damage outside the locks, leaving claims above this amount to redress by Congress. This is the way I interpret it.

I consider the Murphy bill provisions are highly desirable though I believe that $60,000 is perhaps too low a figure—that this might be, well raised perhaps, even doubled to take account of inflation and generally increased costs of repair.

Both bills prescribe the measure of damages in the case of injuries to a vessel for which the Panama Canal Commission would be liable. This includes cost of repairs, charter hire, maintenance, wages, and other expenses incurred by reason of the accident. These statutory additions are in substantial accord with the rules of recovery authorized by the Fifth Circuit of Appeals in *Gulf Oil Corporation* v. *Panama Canal Company.* Unfortunately the administration bill has chosen to chip away at this decision by excluding certain categories of damages. I believe the provisions of the Murphy bill on this point should be adopted without change.

Thank you very much, Mr. Chairman. I would be happy to answer any questions.

Mr. HUBBARD. Thank you very much, Mr. Maechling for an excellent presentation.

Congressman Carney, would you like to speak?

Mr. CARNEY. No.

Mr. HUBBARD. Congressman Carney had some relatives visiting our subcommittee and I was going to give him a chance to introduce them but apparently they were fully informed and left.

I have three friends and constituents from Kentucky. I am pleased to introduce Bob Shaffner, Dick Sizeherman, and Ted Tanner of Lexington, Ky.

Mr. Maechling, the first question: Your proposal for complete cost accounting for services rendered by Panama or the Commission seems to relate to one of the reservations to the Panama Canal Treaty introduced by Senator Brooke. Do you have this reservation in mind?

Mr. MAECHLING. Yes; I do.

Mr. HUBBARD. Would you support an offset provision in the implementing legislation to allow that amount owed the Commission by the Government of Panama be deducted from the payments regardless of the frequency with which the payments are made?

Mr. MAECHLING. This seems to me to be a technical question that I really don't feel quite competent to answer. If that is the most convenient, the most expeditious way of doing it, yes.

I would prefer to see tighter control over the actual services that are provided to see that they do not deteriorate. To do it by way of offset seems to me to try to achieve this long after the fact and without taking a stand right at the time that there is a particular complaint about the quality of services. It strikes me as likely to lead to, well, to a somewhat niggling posture at the wrong time, a belated one.

Mr. HUBBARD. The point you raise with respect to the leases or land-use licenses on U.S. shipping companies and other firms is extremely important. The nonprofit organizations in the Canal Zone raised the same type of questions as you have with respect to their activities.

Your comment on constitutional regulations affirms no retroactive tax by the Panamanians.

As a former official of the executive branch how do you perceive the resolution to be utilized by the executive branch to affirm what the resolution states?

Mr. MAECHLING. Basically to support the executive branch in its continuing negotiations with Panama on the interpretation and proper application of the treaty. I assume Mr. Chairman, that the dialog between Panama and the United States through the Commission will continue indefinitely and throughout the life of the treaty, and that it is perfectly legitimate to bring up points of treaty interpretation or to establish different modus vivendi at any point, or to make different practical arrangements so long as they are within the general ambit of an agreed interpretation of the treaty.

Mr. HUBBARD. Should the language of the resolution be included in implementing legislation and should it be stated as a matter of congressional interest on interpretation or perhaps stated with an assumption that it could be enforced by the executive branch?

Mr. MAECHLING. I believe it should be more of a statement that it is the sense of the Congress or the will of Congress, but of course leaving the details to the discretion of the executive branch to negotiate.

Mr. HUBBARD. Last, the subcommittee has asked about the problem of Panamanian territorial sea claims and we were told there is really no problem. Can you explain the practical difficulties for Panamanian users from a theoretical claim of Panama on this issue?

Mr. MAECHLING. Yes, very simple. Vessels of Panama enforce their ordinary navigation rules: their coast guard, if you will, pilot vessels and so forth.

Right now they are operating in accordance with international custom, as far as I know. There have been a couple of cases of arrests of U.S vessels that caused some international complications. They were private vessels, not public—a yacht, in one case.

If there is a different political complexion in the Government of Panama or if there are political or military difficulties or a situation of revolution in a neighboring country, unrelated perhaps on the surface to U.S. relations with Panama, and Panama wants to interdict their traffic or, for one reason or another, wants to prevent or deter vessels from using the canal, it is rather easy to do that in the case of merchant vessels or many types merchant vessels by exploiting the full range of antipollution or other regulations that exist today.

It is less easy under the Territorial Sea Convention for signatories to do this. There are standards that apply and limits which are imposed to prevent forms of administrative harassment of private vessels of other countries that are passing through the territorial sea on legitimate errands.

The problem I envision is not one that is going to occur except in a crisis of unknown dimension, perhaps not involving the United States but one of its allies, or perhaps carrying out the will of the Organization of American States, or even the U.N. in trying to impose its will on Panama to prevent a dispute or some kind of border altercation from erupting into war. We simply do not know what the occasion would be but these political situations have caused wars before in the case of straits and narrow waters. You may remember that closing the straits of Akaba that triggered one war in the Middle East. The best way of avoiding a similar situation is to try to build in institutional safeguards or standards that would buttress our case in the event that there was any form of interference or harassment not warranted by the actual facts of the situation.

Mr. HUBBARD. Thank you, Mr. Maechling.

Before Chairman Murphy asks questions please permit me to take this prerogative. One more constituent is in the room, Mr. Orstein of Paducah, Ky. Paducah, Ky., is where a late Vice President came from and where 95 percent of the people are who were opposed to these treaties in the first place.

Chairman Murphy, would you like to ask Mr. Maechling questions?

Mr. MURPHY. Mr. Maechling, we appreciate the very carefully prepared document you presented this morning. I think it is perhaps the title on page 2, the administrative proposal set forth in H.R. 111.

Mr. MAECHLING. It should be H.R. 1761.

Mr. MURPHY. At the bottom of page 3 you said: "It further provides (section 102) for Senate confirmation of all nominations to the Board * * *"

Would you comment on the question of the Panamanian nominees to the Board and Senate confirmation of those individuals.

Mr. MAECHLING. By Panamanians?

Mr. MURPHY. Panamanian nationals being confirmed by the U.S. Senate.

Mr. MAECHLING. I understand that there was a whole section in Mr. Breecher's brief stating that this could not be done. I frankly feel that this is more of a problem for the Panamanian officials in connection with their own country than it is for us. I have not actually researched this point. My impression is that in the early days of the Republic there were frequently foreign officers that swore an oath of allegiance to the United States and served in one capacity or another here and overseas, particularly in the Foreign Service.

I, myself, see no objection to Senate confirmation for all nominees to the Board. I also would see no harm in changing the legislation to having Senate confirmation for all U.S. appointees and simply accepting whoever Panama designates.

I think it does present a problem to require Panamanians to swear an oath of allegiance to the United States.

Mr. MURPHY. It does not cause any problem with them being on the U.S. payroll.

Mr. MAECHLING. Not to me, sir, nor can I see any problem. We have appointed people who are not citizens to office. We have the whole area of local hire abroad. I believe we have appointed honorary consuls, and indeed consuls that were foreigners, back through the length of American history. I do not see that a consul would be much different than a member of a board, but I respectfully say that I have not researched this point in the depth that would justify a categorical answer.

Mr. MURPHY. I have some friends who are American citizens but were representing foreign citizens in this country.

Mr. MAECHLING. That is the reverse situation.

Mr. MURPHY. Do you regard members of the Board as officers of the United States?

Mr. MAECHLING. It would depend. It seems to me that under your bill they would not need to be provided the legislation could be amended to clarify the point. Otherwise I do not see how they could help but be officers of the United States.

Mr. Murphy. When you discussed that the legislation should provide for complete cost accounting, both of services rendered by Panama and by the Commission, or with provision for holding payment for adjustment of such services which are either deficient or nonexistent, you mention concealed subsidies.

Would you elaborate on that comment, please?

Mr. Maechling. Well, it certainly seems to me that the toll provisions in some respects are a concealed subsidy to Panama. It seems to me that the way they provide for a flat $10 million payment for the first few years, 3 years, with only revision downard thereafter, is clearly an estimate on the high side, and to this extent constitutes a concealed subsidy for the Republic of Panama. I do not see how this conclusion can be avoided.

Mr. Murphy. You stated that only the Supreme Court can settle the issue when the consent of both Houses of Congress is required for disposition of property to which the United States is tied.

Didn't the justice branch reject a congressional case on this issue?

Mr. Maechling. It does not seem to me that it was posed in quite those terms. As I understand the issue has never actually gone to the full court. One of the problems, Mr. Chairman, is that the old texts simply assume that these Indian treaties were valid. They did not draw the distinction that has been drawn in the memoranda that I have seen that now raise this question of the distinction between adjustment of a boundary or relinquishment of territory which was in dispute or to which the United States not have an unequivocal claim and where there had been a long historical record of good title.

It may be that when the court does decide the issue, depending on the way they want to decide, that they may not attach much importance to that particular question. But I had never seen a U.S. Supreme Court decision that squarely addressed itself to the issue posed in terms of this distinction.

Mr. Murphy. About 60 Members of Congress tried to get to that point. I think there is going to be quite a question raised. Unfortunately it was not decided at the appropriate time.

I would like to bring forward for these hearing the Supreme Court comments on the cases you have presented to the committee.

I guess, again back as far as 8 years ago, 6 years ago, 5 years ago, I wanted to get their comments on cases the State Department had regarding the *Chief Moose Dung* case which was won, in the 40 barrels of whiskey case.

Mr. Maechling. Those are the ones. But I believe there is such a paucity of solid decisions in this area that the issue has not really been called into question until relatively recently. Where Congress acted before, the two Houses were acting in total agreement and unanimity either through concurring resolutions or a concurring House vote to Senate consent.

Also important is the fact that the property being ceded to Panama in this particular case is not all real property. Some of it is actually property in the sense of installations, facilities, equipment and so forth. This distinction has perhaps not been drawn. The argument has not been made that all the historical precedents or virtually all involve land and the boundary adjustments.

Mr. MURPHY. Moving on to page 9 and article IV, section 2 of the treaty, it is a very short section. It says that the Republic of Panama terminates the land licenses for reasons arising under its law.

Mr. MURPHY. This is the implementing agreement, article IV, section 2.

Mr. MAECHLING. First of all, I would say this is totally subject to the nondiscriminatory provisions of article IX, and also must be subject to section 2 of article IX of the treaty, at least for the 30-month transition period.

I, therefore, can only conclude that the termination power applies only after the 30-month transition period.

Mr. MURPHY. Could there then be a retroactive application of Panamanian law?

Mr. MAECHLING. I do not see how, under section 1 of article IX of the treaty, which says that the law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of the treaty only to the extent specifically provided in prior treaties and agreements.

In other words, I do not think they can do this in view of article IV of the agreement in implementation and section 1 of article IX of the treaty. A retroactive tax would be an event; the conduct of a business which occurred prior to the entry into force of the treaty would also be. They could not do that.

Any retroactive penalty dealing with some real or fancied violation, a sanitary violation or something like that, which occurred back in the fifties or sixties would relate to an event which occurred in the former Canal Zone prior to the entry into force of the Treaty: Again, that would be barred.

The paragraph in the agreement of implementation to which you referred, as I see it, must be modified by the 30-month transition period on the one hand, and the retroactive prohibition of article IX-1 on the other; and since that paragraph is a subordinate part of the total agreement, it must hang on the peg of the treaty and would be overridden or modified by the relevant treaty provisions.

I would reject any Panamanian claim in this area.

Mr. MURPHY. They made that claim.

On pages 14 and 15 you talk about settlement of up to $60,000 for nonmaritime claims. You said you would double that.

Mr. MAECHLING. Mr. Chairman, I would probably raise it to $300,000.

Mr. MURPHY. It would permit the person damaged to pay his legal fees, as well.

Mr. MAECHLING. Yes; Mr. Chairman, it would.

Mr. MURPHY. Would you comment on the legality of this question: The plebiscite in Panama was supposed to be for ratification of the treaty by Panama but it was only the basic treaty and not on any Senate qualification, additions or amendments. Will you comment as to the force and effect of those additions and qualifications of the treaty as far as the Republic of Panama is concerned.

Mr. MAECHLING. As I understand it, Mr. Chairman, the law on this is fairly well established now.

The Vienna law of treaties—I did not bring a copy with me, unfortunately—does address the point of reservations but in general the principles are that reservations that are attached to multilateral treaties are treated in a more lenient way than reservations on bilateral treaties.

In the case of bilateral treaty reservations or interpretations that are attached by one country to a treaty, these must in theory be positively accepted by the other country. However if the other party is silent that may be deemed acquiescence. If one party repudiates the other country's reservation, it imperils the treaty itself.

Mr. MURPHY. Thank you very much. Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Carney?

Mr. CARNEY. I have no further questions. Chairman Murphy hit the questions that I was vitally interested in and I thank Mr. Maechling for coming and giving his testimony.

Mr. MAECHLING. Thank you, Mr. Chairman.

Mr. HUBBARD. Mr. Maechling, just one moment to see if counsel and staff have questions.

Mr. Tannenbaum?

I am sorry, I missed Congressman Lowry.

Mr. LOWRY. No questions. You covered it very well.

Mr. TANNENBAUM. On the last question Congressman Murphy proposed, isn't it true that the Panamanian Constitution actually requires a plebiscite for treaty ratification? That would apply to treaty amendments, would it not?

Mr. MAECHLING. Yes.

Mr. TANNENBAUM. So it could be argued that any reservations or understandings or amendments would not be valid.

Mr. MAECHLING. It could be argued; it would depend to some extent on the way it was worded. If it were merely stated that this is the understanding of the Republic of Panama, which I understand is the case of one or two of them, or it would not pose the issue that squarely.

But in any event it is after all a matter of Panamanian law as to whether the original plebiscite still controls and whether or not an additional plebiscite is required.

Mr. TANNENBAUM. In that connection I did discuss this at great length with Panamanian attorneys and they said they had now an independent judiciary and the Supreme Court would be free to so rule on that issue and could rule adversely, similar to our property issue question.

On page 6 you made reference earlier to concealed subsidies in the treaty. Would you care to elaborate on that?

Mr. MAECHLING. Well, I already did for Chairman Murphy but there is no question that the—well, you could argue that the elimination of the interest charge is a concealed subsidy. You could argue that the elimination of amortization is a concealed subsidy. It can be done negatively as well as positively.

You can build a toll structure that provides for payments to Panama in excessive terms.

Mr. TANNENBAUM. I am glad you referred to the elimination of the interest charge. Earlier you referred to Mr. Murphy's bill as increasing the payment by the interest charge.

Mr. MAECHLING. It preserves it.

Mr. TANNENBAUM. The administration bill subtracts it. I thought yesterday we had put this issue to rest because financial experts were here and even Arthur Andersen representatives acknowledged that would be bad accounting practice to eliminate that interest payment.

Mr. MAECHLING. The one thing on the interest payment that I would observe, is that to some extent it all depends on whether you think you have gotten your investment back long since in intangible ways. From that standpoint the strategic benefit of the canal has been and will continue to be the key factor. Whether this should be translated into dollar-and-cents terms and book value and so forth I think is somewhat questionable.

The idea, it seems to me, in making this new arrangement with Panama was to put the Canal on a self-supporting basis. The new payments to Panama are extremely high and perhaps excessive.

If the interest charge is going to break the back of the system I would be opposed to it. If elimination of the interest charge would help to preserve viability of the system I would be in favor of that.

So that I think this is a case where principle has to give way to pragmatic considerations.

Mr. TANNENBAUM. Aren't you saying the treaty should be subsidized, whether in payment to Panama or by eliminating the interest cost factor which good accounting requires?

Mr. MAECHLING. The whole theory of it does incorporate subsidies for payments to Panama.

Mr. TAENNENBAUM. I agree that is the theory and however that is not what was stated. You mention there would be no cost to the taxpayer.

Mr. MAECHLING. A very heavy burden has been put on one shipping and the only reason that there is no more complaint is that is the toll increases have been so dwarfed by fuel oil cost increases that the shipping industry has chosen not to make an issue of it this time around.

Mr. TANNENBAUM. On page 8 you talk about the risk of jeopardizing passage in reference to the Senate.

If the Senate reports the bill out and the President signs it, how would it be superfluous—clearly an act of Congress that would supersede the treaty?

Mr. MAECHLING. I merely said the Senate might report it out that way. They might take the position that the legislation is unnecessary. I do not know whether in fact that will be the case; perhaps they will not. But the point has been repeatedly raised by proponents of the idea that the Senate advice and consent alone is sufficient. If the prerogatives of the Senate are engaged in this matter, they may simply include in their report a statement to this effect.

That is all that I was saying in that remark.

Mr. TANNENBAUM. I misread what you said. In other words, if they do pass legislation, if legislation is passed and the property issue is clearly in the legislation, it would take precedence over the treaty.

Mr. MAECHLING. The treaty is the supreme law of the land.

Mr. TANNENBAUM. So an act of Congress would succeed the treaty because the law is pretty clear that the latter would prevail It may be—perhaps I have not grasped the point you have.

Mr. MAECHLING. I did not say that it would be legally superfluous. Only that if the Senate chose to make an issue of this particular matter, they might in their report state that no congressional legislation was needed to validate the property disposition sections of the treaty.

If they were silent then the legislation would be operative just as it was in the case of all the prior cases where you had legislation in conjunction with a treaty.

Mr. TANNENBAUM. I will not belabor the issue. You are assuming they would approve legislation, with the property disposal questions resolved as stated in the Murphy bill, and issue a separate report saying that was superfluous: That is your statement?

Mr. MAECHLING. That is something to that effect.

Obviously if the Senate passes a bill they pass the bill. Then we have alongside a treaty and implementing the treaty, of course we will have that anyway if it contains the property disposition provisions

All I can imply—perhaps the wording was not too happy—was that the Senate might still make a reservation or take the position with regard to this particular point that legislation was not necessary.

Mr. TANNENBAUM. No further questions.

Mr. LOWRY. Mr. Merin, counsel for the minority, has some questions.

Mr. MERIN. On page 13 of your statement you are discussing the Law of the Sea Conference.

Mr. MAECHLING. Yes.

Mr. MERIN. I was wondering, to the best of your knowledge, if Panama was identified with the group of 77——

Mr. MAECHLING. Yes.

Mr. MERIN [continuing]. And subscribes to the views of the group of 77 with regard to straits in international waters?

Mr. MAECHLING. In greater or lesser degree. The present hangup of the Law of the Sea Conference, as you undoubtedly know, is over deep sea mining beyond the limits of national jurisdiction. The position of Ambassador Richardson, as he has reported to the Congress and to the Public Advisory Committee, of which I am a member, is that the navigational and economic use sections of the proposed treaty are almost tied up, that there are no longer substantial differences in that regard.

A law of the sea treaty would help to mitigate in some degree the situation here, because if you have adequate navigational safeguards in the 200-mile economic zone, and you also have a territorial sea agreement which you would not be 3 miles any more but 12 miles (or which there appears to be a general consensus) that would in large degree take care of any concerns.

It would not, however, take care of them 100 percent because you still do not have Panama adhering to specific standards in the Territorial Sea Convention of 1958.

Mr. MERIN. The other set of questions is based on matters we discussed briefly before.

Article IX, paragraph 2, as you indicated concludes with a statement that: "Thereafter such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination," and you mentioned in your testimony that it might be advisable to kind of clarify that to some greater degree.

I was trying to find out whether we might get some interpretation as to rights of American companies that would be in Panamanian territory after the treaty goes into effect, especially after the transition period from the CALVO doctrine adhered to by several Latin American countries.

Mr. MAECHLING. All Latin American countries adhere to the CALVO doctrine.

Mr. MERIN. As I understand it, the CALVO doctrine is either set forth in the constitution of those countries, the laws of the country, or various contracts with firms that enter the local market.

Regarding section 202, of the restatement of foreign relations laws of the United States there is the following comment. I would like to read it to you, and would be glad to hear your comments.

It discusses the basic thrust of the CALVO doctrine. I will read it for the record:

> The basic principle of the CALVO doctrine is that the responsibility of the state with respect to the alien of international law is no greater than the responsibility to the national under its own law.

The comment reads in part:

> A state does not discriminate against an alien if there is reasonable basis for treating him differently from the national. However, a State cannot rely on the CALVO laws as the basis for treating an alien in the manner that does not comply with the international standards. If it treats him less favorably than a national, even though it may have reasonable ground to such different treatment, to do so would be inconsistent with the requirements of the laws that the alien be treated as a national.

Mr. MAECHLING. This gets down to the old question of classification, justifiable classification.

Now, Panama adheres to the CALVO doctrine. They take the general Third World view. They are active in the group of 77, the UNCTAD Conference, and all other international meetings where the group of 77 is active.

By and large they are very sensitive about their sovereignty. They believe any foreign activities in their borders can only be judged, as do most Third World countries, by their own domestic law. They object to the type of international standards we regard as proper, especially as regards nationalization. However, this issue has not arisen in the case of Panama because Panama does not have substantial mineral resources. So, we do not have the test case as, for example, with Peru.

Mr. MERIN. It was my thought that perhaps we might safeguard the rights of American citizens by resorting to what is found in that section.

Mr. MAECHLING. It would be very difficult to do that because the treaty has more or less given that away. The only safeguard is that treatment for foreigners not be discriminatory and by discriminatory I assume that this means that any legislation, tax, or any other provision passed by Panama to affect business in general must apply equally to Panamanian corporations as well as to foreign corporations.

The distinction, however is somewhat muddied by the fact that many American businesses, in fact all the banks, operate through local subsidiaries. These are totally subject to Panamanian law.

You only have contractual rights of foreign leaseholders, property holders, to worry about down there, plus where the ownership of a business or facility is in a U.S. domestic corporation. Where you have overseas domestic corporations it simply makes the question moot.

Mr. MERIN. Thank you very much.

Mr. HUBBARD. Thank you very much, again, Mr. Charles Maechling, Jr., for your testimony

Mr. MERIN. Thank you, Mr. Chairman.

[The complete statement of Mr. Charles Maechling, Jr., follows:]

STATEMENT OF CHARLES MAECHLING, JR., ON THE PANAMA CANAL LEGISLATION

My comments on the implementing legislation to the Panama Canal Treaties of 1977 are divided into two broad categories. Section I examines the more important issues raised by the implementing legislation itself, as proposed in two separate bills, the Administration Bill (H.R. 1716) and the Murphy Bill (H.R. 111). Section II deals with questions not addressed in either the Administration or the Murphy Bill, but which, as a result of the transfer of jurisdiction and authority from the Panama Canal Company to the Republic of Panama, will affect shipping companies and other users of the canal, property licenses, outside contractors and third parties in general.

I. *The Legislation—Principal Features.*—The principal issues raised by the legislation involve (a) the structure, legal status and functions of the new Panama Canal Commission; (b) financial provisions of the treaties including payments to Panama, and (c) disposition of U.S. property.

A. *The Structure, Legal Status and Functions of the New Panama Canal Commission.*—The two bills are diametrically opposed in their philosophy of the future governance of the Canal after October, 1979. At issue is where ultimate control of the policies and administration of the new Commission is to reside. The question is whether, as in the Administration Bill, the new Panama Canal Commission takes the form of a quasi-autonomous government corporation, virtually identical in legal character to the present Panama Canal Company; or, whether, as in the Murphy Bill, it becomes an "appropriated funds" agency, and as such an undifferentiated part of the Executive branch. Depending on which concept is chosen, several important subsidiary decisions would tend to fall into place, if not be actually predetermined.

Government corporation—administration proposal

The Administration proposal, set forth in H.R. 1761 provides for a new corporate entity so similar in legal form to the Panama Canal Company that only a name change would be necessary to make much of the Company's organic legislation applicable to the Panama Canal Commission. It would establish a successor corporate entity to the Panama Canal Company to operate the Canal on a self-sustaining basis in accordance with the provisions of their legislation and the Government Corporation Control Act (31 U.S.C. Sec. 841). In this respect the Administration proposal has the virtue of great legislative convenience and an easy administrative transition from one corporate mode to another.

On the all important question of control, the Administration Bill provides for managment of the Commission's affairs by a Board of Directors responsible only to itself, with the majority to be United States nationals. The Bill is generally silent as to the powers and functions of the Board, but the section-by-section analysis makes it clear that these would be virtually identical with those of the present Board. The intent is for substantially the same U.S. public officials that make up the present Board to constitute the 5-man U.S. majority of the Commission's Board.

Government agency (Murphy bill)

The approach of H.R. 11 is substantially different. Taking a literal construction of the language of Paragraph 3, Article III of the Panama Canal Treaty, which provides that the United States shall "in accordance with the terms of this Treaty and the provisions of U.S. law, carry out its responsibilities by means of a U.S. Government agency called the Panama Canal Commission", it discards the concept of a quasi-autonomous corporation in favor of a regular "appropriated funds" agency. In essence it seeks to return the Canal enterprise to pre-1951 status when it was an integral part of the Executive branch. As a U.S. Government agency, the Panama Canal Commission would become subject to the same fiscal and administrative controls as are applicable to Government agencies generally, including the Administrative Procedure Act, and the Accounting and Auditing Act of 1950.

The Murphy Bill differs from the Administration Bill in other significant respects. It provides (Section 101) that the operations of the Commission shall be carried out under the direction of the Secretary of Defense, and that (Section 102) the Board of Directors shall also exercise its functions under the direction of the Secretary of Defense. It provides (Section 108) that in the event of war or the imminence of war, a U.S. military officer designated by the President shall assume exclusive authority over the Canal. It provides (Section 103) that the Administrator of the Commission, his Deputy and the Chief Engineer be subject to Senate confirmation. It further provides (Section 102) for Senate confirmation of all nominations to the Board, and denies eligibility for appointment to the Board to governmental officials.

COMMENT

Sound arguments can be made for each approach. Establishment of the Commission as a government corporation preserves continuity from the Panama Canal Company; both as to the form and substance of administration. A government corporation has the obvious advantages of administrative and fiscal autonomy—flexibility, promptness of decision and some degree of freedom from sterile bureaucratic requirements. From the standpoint of relations with Panama, the corporate form avoids government-to-government confrontation on minor issues. The Board would also exercise a more meaningful role, thus permitting greater minority participation in policy formation. On particular issues, the minority slate of four Panamanian directors would not only have a voice, but with a switch of one vote, could have a decisive one.

Establishment of the Commission as a U.S. government agency on the other hand, ensures both a greater degree of control by the Executive branch and tighter Congressional oversight, particularly as regards the finances of the Commission and payments to Panama. The present Company is subject to annual Budget review by Congress, but only as to totals and broad categories. A government agency would be subject to the full rigor of the Congressional appropriation process, including the necessity of being prepareed to justify every line-item.

The Murphy Bill can bring some weighty arguments to bear in favor of a straight agency approach. The obligations of the United States as set forth in the Treaties are those of the U.S. Government, not of a subsidiary corporation. Both the Panama Canal Treaty and the Neutrality Treaty place heavy emphasis on international freedom of transit and defense of the Canal against aggression—responsibilities of the Executive branch, especially the State and Defense departments, rather than of a corporate instrument thereof. The provision for termination of the Panama Canal Company seems to favor a clean break with the past mode of Canal administration rather than a mere change of corporate form.

On the other hand, a government corporation was the Congressional choice for operating the Canal from 1951 to the present, during which time all the same factors were operative. Reversion of the Canal enterprise to Pre-1951 status would clearly be a step backward from the concept of gradually phasing out U.S. control preparatory to complete transfer of the facility to Panama in 2000 A.D. Moreover, the Murphy Bill subordinates the Board and the operation of the Canal to DOD authority in such a way as to render the Board to virtual nullity. It would seem very difficult for the Administration to accept the concept of H.R. 111 without precipitating another crisis with Panama.

B. *Financial Administration and Payments to Panama.*—The form of fiscal administration to be adopted is to some extent dictated by the decision reached with respect to the legal form of the Panama Canal Commission. The Administration proposal is for fiscal autonomy—to have Canal revenues collected and retained by the Commission, followed by disbursement direct to Panama of payments due under Articles III and XIII of the Panama Canal Treaty. Under the corporate mode of administration there would be an annual budget review by the appropriate Congressiona committee but not annual authorization and appropriation of funds.

The Murphy Bill provides that Canal revenues shall be remitted to the general account of the Treasury and expenditures paid out in accordance with the standard practice of other government agencies, i.e. through Congressional authorization and appropriations.

The Murphy Bill would also substantially increase payments of the Canal enterprise into the U.S. Treasury by continuing the annual interest payment on U.S. net direct investment, amounting to $18 to $20 million annually, and requiring depreciation and amortization of use rights as well as costs of replacement, expansion and capital improvements, which would amount to $16 million annually.

COMMENT

The rationale of a government corporation is to provide administrative flexibility and some degree of fiscal autonomy for an enterprise different in character and mission from a government agency. From a financial standpoint this rationale seems valid for the Panama Canal Company which is committed by treaty to being self-sustaining. If for one reason or another the Canal ceases to be a profitable enterprise between the years 1979 and 2000, the corporate form to some extent insulates Congress from responsibility for its financial management. By vesting responsibility for administration in a corporate board of directors, the onus for any departure from the Administration's firm commitment that the Canal enterprise will henceforth not depend on a single tax dollar would rest unequivocally at the door of the Executive branch.

These arguments would be persuasive were it not for the fact that it is the United States—not the Panama Canal Commission—which by treaty is committed to turning over the Canal to Panama free and clear of debt and obligation. Moreover, there does not appear to be any way for Congress to avoid its constitutional responsibility for funds passing through a government agency, however constituted. The annual appropriations process enables Congress to keep a closer oversight over any financial or administrative difficulties afflicting the Canal than does budget review. It can also take more timely action instead of waiting for problems to build up.

The options here are limited. The advantages of the corporate mode would be vitiated by requiring the full appropriations process of a regular government agency. Conversely, a decision to return to pre-1951 status would require it. According the Department of Justice either option would require it. According to the Department of Justice either option would satisfy treaty and constitutional requirements.

ADDITIONAL RECOMMENDATION

Sections 204 of the Administration Bill and Section 250 of the Murphy Bill authorize payments to Panama for providing certain public services in the Canal operating and housing areas pursuant to paragraph 5 of Article III of the Panama Canal Treaty—police and fire protection, street lighting and cleaning, traffic management, and garbage collection. Another provision (Section 251 of the Murphy Bill) is supposed to authorize the Panama Canal Commission to furnish the Republic of Panama with materials, services, water and electric power at rates to agreed upon by the Commission and Panama.

The legislation should provide for complete cost accounting of both the services rendered by Panama and by the Commission, with provision for withholding payment or adjusting rates in the event such services are either deficient or nonexistent.

C. *Disposition of Property.*—Legal opinions rendered by the Attorney General, the Legal Adviser of the Department of State, and the State Foreign Relations Committee concur that U.S. Government property can be transferred to Panama through the self-executing provisions of a treaty. They cite border settlements such as the Florida Treaty of 1819, the Webster-Asburton Treaty of 1842, and various Indian treaties as precedent, as well as Supreme Court decisions in support of their position.

The Murphy Bill rejects these precedents on the ground that the self-executing Treaties cited therein involved boundary adjustments or compromises where title was in dispute, rather than dispositions of property to which the United States had unequivocal title. It would require authorization by both Houses of Congress for all transfers of U.S. property to Panama.

COMMENT

If Section 373 of the Murphy Bill stays in the bill it will present the Senate with a nice dilemma—whether to strike it in the interest of preserving the Senate's prerogatives in treaty ratifications—but at the risk of jeopardizing passage—or ride along with it and report it out as superfluous.

In the opinion of the undersigned, only the Supreme Court can settle the question of whether consent by both Houses of Congress is required for disposition of property to which the United States has unequivocal title.

II. *External Relations (Outside Present Legislation)*—A. *Land Licenses and Contracts.*—U.S. shipping companies and other firms now hold leases or licenses for the use of land located both within the area to be transferred to Panama on the effective date of the treaty and within the Canal Operating Area reserved for the use of the Panama Canal Commission until termination of the Panama Canal Treaty in the year 2000. Although the Treaty is ambiguous, it is believed that in both areas Panama will succeed to the rights of the lessor when the Panama Canal Company ceases to exist. In any event, both the Treaty and Article IV of the Agreement in Implementation of Article III assume that land licenses for the entire area of the former Canal Zone, both within the Canal Operating Area and outside it, will be issued by the Republic of Panama.

Section 2 of Article IX of the Panama Canal Treaty requires Panama to allow private business and non-profit organizations to continue to operate in their leased premises for a 30-month transition period "under the same terms and conditions prevailing prior to the entry into force of this Treaty. Section 1 of Article IX prohibits retroactive application of Panamanian law, except as specifically provided by treaty or agreements. Article IV of the Agreement in Implementation authorizes commercial use of the land within the Operating Area subject to joint agreement on land licenses by the U.S. and Panama. These provisions appear sufficient to validate the express provisions of Canal Zone land-use licenses currently in force, but will require clarification with respect to extensions and new licenses:

(1) *Administrative Fees for Issuance of Leases or Land-Use Licenses.*—The Canal Zone Government has not as a matter of policy imposed any administrative fees or charges for the preparation of land-use licenses or leases. Can a commitment be obtained from the Republic of Panama that it will continue this practice?

(2) *Lease or Licenses Terms Within the Canal Operating Area.*—Section 2 of Article IX of the Treaty requires that existing licenses be confirmed and operating terms remain unchanged during the 30-month transition period; thereafter, that businesses receive the same treatment as those "already established in the rest * * * of Panama without discrimination." Section 4 of Article IX states that owners of buildings and improvements can continue using them throughout the life of the Treaty, subject to conditions laid down in Article IV of the Agreement in Implementation. Section 2 of Article IV provides that the United States must agree to the terms and conditions of any land licenses issued within the Operating Area.

(3) *Lease or License Terms In Land Under Total Control of Panama.*—In addition to the above requirements of Section 2, Sections 3 and 5 of Article IX of the Treaty provide that rights of ownership in the former Canal Zone shall be respected by Panama and that owners of buildings and other improvements on land not subject to the land-use licensing provisions of Article IV of the Agreement in Implementation, (i.e. outside the Canal Operating Area) "may continue [during the transition period] to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama."

(4) *Taxes and Other Charges.*—Section 2 of Article IX provides adequate safeguards against escalation or imposition of new taxes and other charges on businesses within the former Zone during the 30-month transition period. Thereafter, contractors and businesses must rely on the abovementioned requirement of nondiscriminatory treatment, and the proviso in Section 1 of Article IX protecting against retroactive imposition of Panamanian law.

COMMENT

(a) Taken together, the provisions cited in 4) above seem to provide adequate safeguards against the imposition on United States and other foreign businesses located in the former Zone of discriminatory or even retroactive taxes and other charges: Nevertheless a Congressional resolution to this effect would do no harm.

(b) In its implementing legislation, Congress should confirm that the terms, conditions and charges for land-use licenses within the Canal Operating Area after the 30-month transition period should be defined by an objective standard equally applicable to citizens of Panama, and an annual report on this matter should be submitted by the Commission at the time of annual budget review.

(c) With respect to licenses falling outside the Operating Area, the United States should be requested to negotiate an understanding with Panama as to the objective standard to be applied to insure "reasonable" licenses and other charges.

B. *Shipping*—1. *Safeguards Along Access Routes.*—By Articles II and III of the Neutrality Treaty, Panama commits itself to the peaceful transit of the Canal by vessels of all nations on terms of entire equality, subject (a) to rules and regulations that are "just, equitable and reasonable", and (b) tolls and other charges that are "just, reasonable, equitable and consistent with the principals of international law." Annex A of the Neutrality Treaty defines the Canal to include the entraces thereof within the territorial sea of the Republic of Panama as demarcated on the map designated as Annex B. Beyond this area the access routes to the Canal are not otherwise protected.

Article XI of the Panama Canal Treaty provides that upon entry into force of the Treaty in October, 1979, the Republic of Panama will reassume plenary jurisdiction over the former Canal Zone, except that in certain areas and installations made available for use of the United States (i.e. the Canal Operating Area) concurrent jurisdiction will exist during a 30-month transition period. This expunges the former Canal Zone territorial sea and transfers jurisdiction over these waters to Panama.

The combined result of the above provisions is that on the effective date of the Treaty, Panama will have virtual sovereignty over all access routes to the Canal in both oceans out to the limits of its territorial sea, including the entrance strips demarcated in Annex B.

Panama has elected not to become a party to either the Territorial Sea Convention of 1958 or the High Seas Convention of 1958. Instead, by unilateral action, it has declared a 200-mile territorial sea on both coasts. Although Panama has not fully enforced this extravagant claim, in theory at least Panamanian jurisdiction is supreme within this area for purposes of pratique, rules of navigation, anti-pollution safeguards, and "innocent passage" requirements, subject only to such moderation as it chooses to exercise and such rights as are accorded to the vessels of other nations by the Neutrality Treaty.

The United States does not recognize unilateral extensions of the territorial sea beyond three miles pending international agreement on the subject at the Law-of-the-Sea Conference. It is on record as favoring a uniform standard of 12-miles for the territorial sea, and has repeatedly rejected any claims beyond that boundary. Owing to the failure of the U.S. negotiators to include a rollback of the Panamanian territorial sea claim to reasonable limits in the Treaty negotiations, we are now faced with a Panamanian territorial sea that vastly overlaps the defined area of the Canal. Reliance on the economic self-interest of Panama to avoid harrassment of the vessels within this zone for the indefinite future, and in all political circumstances, is clearly insufficient. The prospective extinction of the Canal Zone's 3-mile territorial sea in October, 1979, makes it imperative for the United States to assure itself that fair and reasonable standards of regulation are applied within this area.

COMMENT

The United States Government should take up with the Republic of Panama the question of regulatory standards within the Panamanian territorial sea, and if possible negotiate an agreement to assure that such regulatory standards are reasonable and consistent with international maritime custom and the transit rights provided in the Panama Canal Treaties.

2. *Liability for Damages.*—The legislation introduced contained three significant changes, which may affect shipowner liability:

(1) The present provisions to Title 2 of the Canal Zone Code of Section 291, reduce damages payable by the United States for injuries to vessels in the locks only in proportion to the fault of the vessel and its crew. This is based on the principle that, while in the locks, a vessel is within the exclusive control of the Canal operator. The Administration Bill would amend Section 291 to condition liability for injuries to vessels in the locks on the negligence of Commission employees—the rule now prevailing in the case of injuries to vessels outside the locks. This little-noticed change could relieve the Commission (the United States) of liability in each case that it adduced proof that the injury was not "proximately caused" by employees of the Commission. It should not be adopted.

(2) The Administration Bill would continue to require proof of agency negligence for all claims of damage outside the locks. The Murphy Bill, however, would reauthorize the Commission to make settlement of claims up to $60,000 for non-maritime claims and vessel damage outside the locks, leaving claims above this amount to redress by Congress. The Murphy Bill provisions are obviously desireable, though $60,000 now seems far too low to compensate for modern repair costs.

(3) Both bills prescribe the measure of damages in the case of injuries to a vessel for which the Panama Canal Commission would be liable: it includes cost of repairs, charter hire acutally lost or actually paid, maintenance, wages, and other expenses incurred by reason of the accident. These statutory additions are in substantial accord with the rules of recovery authorized by the Fifth Circuit Court of Appeals in Gulf Oil Corporation v. Panama Canal Company, 481 F.2d 561 (C.A. 5th, 1973). Unfortunately, Section 260 of the Administration Bill departs from this decision by amending the present Canal Zone Code (2 CZ 293) to exclude certain categories of damage which the Court of Appeals allowed in the Gulf Oil case, and to exclude liability for delays caused by the investigation of marine accidents—even when the investigation establishes that the accident was the fault of the Commission. The latter changes should not be adopted.

Mr. HUBBARD. Our next witnesses are a panel of experts on the environment. First, Dr. Paul Campanella who is the former environmental officer with the Panama Canal Company and a former scientist with the Smithsonian Institution.

After Dr. Campanella, we will have Mr. Michael Wright as the second witness. He is the director of international programs for the Nature Conservancy.

Mr. John Hendrickson, environmental adviser and senior staff officer of the U.S. section of the International Joint Commission, was to be our third witness this morning. Unfortunately, Mr. Hendrickson's schedule called for him to be at a meeting in Canada today, so he could not be present. However, we have a statement for the record and will make that statement available to the public.

We also have a statement from Mr. David Ortman of the Friends of the Earth that we would like to have entered into the record at this time.

Hearing no objection, it is so ordered.

[The documents referred to follow:]

STATEMENT OF JOHN HENDRICKSON

Mr. Chairman, members of the subcommittee. My name is John Hendrickson and I am the Environmental Advisor and senior staff officer of the U.S. Section of the International Joint Commission. While I am not appearing before this committee today on behalf of the International Joint Commission, some comment on the institution might be helpful to committee members and establish the basis for my comments concerning the legislation which you have under consideration.

The Commission is an international bilateral organization created by the Boundary Waters Treaty of 1909 between the United States and Great Britain acting for Canada. The purpose of the treaty is to prevent disputes or to resolve disputes arising from the use of the boundary waters by the United States and Canada. The Commission was given the responsibility for approving the construction of facilities which would affect the levels and flows of boundary waters by hydroelectric power generating plants, navigation locks, etc.

Another provision of the Treaty gave to the Commission a responsibility for investigating and making recommendations on any problem referred to it by the Parties to the Treaty. This provision coupled with another which prohibits one country from polluting the waters of the other country to the extent of causing harm to persons or property on the other side has provided the Commission with a basis for a great deal of its work over the past twenty years.

The International Joint Commission is composed of six Commissioners, three from the United States and three from Canada, the U.S. members appointed by the President with the advice and consent of the Senate. The Commission is manned with a small staff of advisors in Washington and Ottawa.

In 1972 the United States and Canada signed the Great Lakes Water Quality Agreement aimed at "cleaning up" the Great Lakes and asked the Commission to oversee the implementation of remedial programs. In 1972 the Commission established a joint office at Windsor, Ontario, to assist the Commission in carrying out its responsibilities under the Agreement. In November of this last year the two governments reached accords which strengthen the 1972 pact and continue the Commission in its "watchdog" role.

The Boundary Waters Treaty also gave the Commission authority to call on appropriate agencies of the respective governments for assistance in undertaking technical studies and developing solutions and recommendations for the Commission's consideration. This provision has made it unnecessary for the Commission to establish its own large staff of experts, has made federal and state data available to the Commission, and has extensively eliminated duplication and overlap.

Just a word about funding. Each section of the Commission pays its own costs. The U.S. Section's budget is submitted to Congress as a part of the State Department budget. In those instances where there is a joint effort there is an equal sharing of the cost at a previously agreed to level of funding. The Chairman of each section is a full time employee of his government, the other four members are part time employees. The U.S. part time members are paid at an hourly wage rate commensurate with the Executive level 4 but not to exceed 50% of the annual salary. In other words, two of the U.S. Commissioners are half-time employees. The full time staff—four professional and five support—are career civil servants.

During the past several months it has been my privilege to serve on a panel of consultants to the Office of Technology Assistance examining what organizational and procedural aspects of the International Joint Commission might be adopted to the Joint Commission on the Environment which is established by Article VI of the Panama Canal Treaty.

It is to those provisions of Article VI of the Treaty, as well as Section 106 of Title I of H.R. 111 and Section 101 of Title I of H.R. 1761, that I wish now to direct my remarks.

It is my view that the provisions of the Treaty and the two legislative proposals you are now considering are woefully lacking in providing a basis for a meaningful effort to protect the environment of the Canal Zone. They are so limited as to cast real doubt that the framers were really seriously concerned with such an objective.

Since the Treaty has been signed and ratified it becomes necessasry that if U.S. and Panamanian intentions are sincere, enabling legislation should contain adequate provisions from which to launch a meaningful program. The U.S.-Canadian experience has shown that specific agreements are necessasry to achieve real progress in providing a better environment. The Great Lakes Water Quality Agreement first signed in 1972 and renegotiated in 1978 is a case in point. But the decision to prevent environmental degradation in the Canal Zone seems to be missing. That decision however, will be reflected in what provisions are made for the establishment and operation of the Commission in the legislation before this Committee.

Article VI of the Treaty identifies the purpose of the Joint Commission as reviewing the "implementation of the Treaty" and to "made recommendations for the protection of the environment from adverse effects resulting from actions taken pursuant to the treaty." How these words are eventually interpreted could impose on the Joint Commission significant responsibilities. Therefore, some provisions should be made for the Commission to have a source of technical and funding support adequate to meet such responsibilities.

Section 101 of Title I of HR 1761, it seems to me, is totally inadequate to provide a meaningful program. It provides only that the President will appoint the representatives of the United States to the Joint Commission the Environment.

Section 106 of Title I of HR 111 goes somewhat further. It provides first that "the President may establish a Joint Commission on the Environment." However, I am not certain that this is appropriate language since the Treaty itself creates the Commission. The parties to the Treaty implement those provisions by appointing their respective representatives and providing the necessary resources for its operations.

I am concerned with the provisions of HR 111 which provide that "Members * * * shall serve without compensation * * *" It is my view that a viable Commission will have a considerable work to do, a great deal more than either the Treaty or the proposed legislation implies. It is likely, in my view, that at least one Commissioner from each country will be needed on a full time basis.

There are no provisions for establishing an office, for the employment of permanent staff, for reporting to governments, or for establishing budgets and other administrative procedures for normal agency operations.

It is imperative, in my estimation that implementing legislation provide the framework of an institutional arrangement which the U.S. is willing to support.

I would offer the following suggestions:

1. The Commissioners should be compensated for their work in addition to traveling expenses and per diem. Competent, able Commissioners are needed; ones who will have some understanding of the environmental issues. The Com-

missioners will be difficult to find at best; almost impossible, I believe, if asked to serve without pay.

2. The U.S. Section should be authorized to employ a small permanent staff or advisors; who will be full time employees of the U.S. Government and eligible for all Civil Service benefits.

Permanent staff will provide continuity to Commission operations. The professional disciplines to be represented on the staff might vary to a limited extent but should include an environmental scientist, an engineer, a lawyer, and an administrative officer. Panama should be encouraged to provide a like number of permanent staff.

3. The U.S. members of the Commission should be authorized to establish in cooperation with the Panamanian members Rules of Procedure to be approved by the two Governments.

4. Provision should be made for authorizing U.S. Commissioners to prepare a joint budget for the support of the Commission on a 50–50 basis, or at least to some previously agreed to basis.

5. The U.S. Commissioners should be authorized to utilize appropriate agencies of the Federal Government to assist them in carrying out their responsibilities under the Treaty.

Such a provision would make it unnecessary for the Commission to hire a large enough permanent staff to conduct its own studies. This is a procedure which the IJC used for over 60 years with outstanding success. Since the bulk of the Panama Canal Treaty Joint Commission will be in Panama, a considerable distance to travel for agency experts, it would be desirable to authorize the Joint Committee to include in its budget sufficient funds to reimburse government agencies who provide such assistance.

6. There should be some provision in enabling legislation which will characterize the Commission as an uninstructed entity. Since there is no provision in the Treaty which endows the Commission with enforcement or permitting authority, it is assumed that its principal function will be to make recommendations to the two Governments.

Without the enforcement authority or the ability to bind the parties to the Treaty to implement its recommendations there should be no problem with granting the Joint Commission the right to express itself publicly without the need to first consult with the respective governments.

This has been a procedure followed by the U.S. and Canadian Governments with respect to the International Joint Commission and it has caused no serious difficulties for either country over the years. In many respects it has been beneficial to governments to get a third party opinion that has not had to consider national program policies or the political or financial feasibility of their recommendations; although the IJC has indicated in most cases in recent years what the anticipated costs would be to implement its recommendations.

7. A Joint office or headquarters in the Canal Zone or Panama should be authorized, the cost of which should be borne by the two Governments at an agreed to percentage level of support.

As previously stated the IJC has such an office in Windsor, Ontario. Each government pays the salaries of their respective employees, but other operational costs are shared equally by Canada and the United States. The effort has been an excellent example of the cooperation that can be acheived in this binational circumstance. The mutual interest of the United States and Panama in the continued effective operation of the Canal should provide the common denominator for the successful operation of the joint office in Panama.

8. Finally, I would suggest that the Joint Commission report at least annually to the Governments, and that it be responsible to governments. As an international organization it would report to U.S. Government through the State Department. I do not see the Joint Commission on the Environment as subserviant or responsible to the Panama Canal Commission.

In closing let me say that it is difficult for me to comment on the environmental ramifications of the Panama Canal Treaty and related agreements. I am not sufficiently informed on the environment of Panama to make that kind of judgement. I do know, however, as I am sure members of this Committee know, that over the last 15 years we have come to recognize that whatever man does to utilize the resources of this Earth there is an environmental ramification.

I see the role of this Joint Commission on the Environment as advisors to the two governments and to the Panama Canal Commission, providing an assessment of the likely environmental impacts of contemplated actions; of undertaking studies and offering advice to minimize adverse environmental impacts. I see the role of the

Joint Commission as a technically or scientific oriented entity that would be in a position to advise both countries on mitigation required to resolve a potential or existing environmental problem.

I believe that the Joint Commission could render the best service by being independent of the other organizations provided for in the Treaty; and for the United States part anyway, funded out of appropriations provided by the Congress.

I see as the Joint Committee's first job [as] the need to assess the current operations of the Canal for their impacts on the environment; assessing current programs which are directed toward minimizing environmental impacts and their effectiveness, and to develop baseline data for use in evaluating the need for future programs.

As I said before I am not fully conversant with the environmental problems in Panama generally or the Canal Zone specifically, but I am aware that there is illegal encroachment onto lands which form a part of the drainage to the canal with the result that forest and grass cover is being destroyed. I am aware that dredging is a major program in the Canal. I am aware that there is an acquatic weed control program being carried out using chemicals. These three programs or activities will give most any environmentalist cause for concern.

I believe there is a significant work for the Joint commission on the Environment to do, and I would urge on this committee the need to provide in this legislation, [*for establishing*] a meaningful institutional framework for such a Commission.

STATEMENT OF DAVID E. ORTMAN, RESEARCH ASSOCIATE, FRIENDS OF THE EARTH

My name is David E. Ortman, a Research Associate with Friends of the Earth. Friends of the Earth is a national environmental organization with approximately 20,000 members. In addition, we have sister organizations in twenty foreign countries.

Environmental and conservation organizations have long been concerned about the preservation of the Canal Zone in Panama. We have also continued to voice opposition to a Sea-level Canal across the Isthmus. Several studies for such a project, mostly engineering in nature have already been done. Friends of the Earth is opposed to any more updating of an Atlantic-Pacific interoceanic canal study. However, if Congress decides to fund such an effort we strongly urge that any studies be directed to determining the environmental effects and ecological impacts of such a project. These concerns were made recently in a letter to President Carter on the implementing legislation and we ask that it be included in the record.

The provisions of the legislation which concern us most are Sections 101 (U.S.-Panama Joint Committees) and 207 (Sea-level Canal Study) of H.R. 1716—and Section 106 (Joint Commission on the Environment) of H.R. 111. Although Section 101 of H.R. 1716 was not referred to the Committee on Merchant Marine and Fisheries, it is similar in nature to Section 106 of H.R. 111 and will therefore be included in our discussions of the legislation before this Committee.

Joint Environmental Commission

Section 101 of H.R. 1716 and Section 106 of H.R. 111 both attempt to carry out the intent of paragraph 2 of Article VI of the Panama Canal Treaty of 1977:

> ARTICLE VI. PROTECTION OF THE ENVIRONMENT
>
> 1. The United States of America and the Republic of Panama commit themselves to implement the Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.
>
> 2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.
>
> 3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for

consideration of the recommendation of the Commission before the contemplated action is carried out.

H.R. 1716 makes reference only to the appointment of U.S. Representation to the Commission. H.R. 111, on the other hand, outlines in more detail the role and make up of the Commission:

(a) limiting the number of representatives on the Commission to three each from the U.S. and Panama;

(b) charging the joint commission to periodically review the implementation of the Treaty;

(c) to make recommendations to the U.S. and Panama with respect to ways to avoid or mitigate adverse environmental impacts;

(d) appointing representatives of the U.S. by the President, by and with the advice of the Senate;

(e) U.S. Commission members serving without compensation, except for travel expenses in accordance with Section 107.

H.R. 111 therefore sets within the legislation the minimum requirements of Article VI of the Panama Canal Treaty of 1977.

However, several aspects of the JEC need to be resolved. First is the question of funding. As a matter of policy and to insure as much independence as possible, the JEC should receive appropriated funding from both governments. While the environmental impacts may logically be assessed as part of the canal operations and therefore recovered from tolls, we feel that to tie the Commission to such funding at this point would be unwise. However, we would encourage a study after the establishment of the JEC to determine the relative impact to tolls should funding be attached to this source.

Second, we feel that U.S. Commission members should be salaried in order to attract a larger number of candidates, not just those who could afford to undertake such a position without compensation. We ask that this portion of H.R. 111 be amended.

Third is the question of scope. The Joint Environmental Commission should have the broadest possible latitude to insure that the Treaty is implemented in a manner consistent with the protection of the natural environment of the Republic of Panama. In otherwords, there should be no attempt to restrict the JEC to impacts only within the existing canal zone. This is particularly important since only 1/20 of the entire Canal watershed is within the Canal Zone.

Fourth is the matter of the relationship between the JEC and the Panama Canal Commission. We favor complete independence for the JEC from any influence, either financial (tying the JEC to tolls for example without adequate financial independence) or political.

At the same time however, we would like to see the maximum possible involvement with the Panama Canal Commission at the earliest possible time in the decision making process to adequately carry out the requirements of paragraph 3 of Article VI and to insure that adverse environmental impacts are avoided or mitigated. One way to do this might be to have the Chairman of the JEC be a permanent member of the Consultative Committee set up in Sec. 105 of H.R. 111 pursuant to Paragraph 7 of Article III of the Treaty.

SEA-LEVEL CANAL STUDY

Section 270 of H.R. 1716 deals with the Sea-level Canal Study referred to in Article XII of the Panama Canal Treaty of 1977. Major provisions of this section include:

(a) appointing the representatives of the U.S. by the President to any Joint Committee to study a sea-level canal;

(b) transmittal of text of any such study by the President to the President of the Senate and to the Speaker of the House of Representatives;

(c) no construction of a sea-level canal by the U.S. shall be undertaken except with congressional authorization after submission of the study.

National and international environmental and conservation organizations have expressed their opposition to a sea-level and attempted in 1975 in a telegram to President Ford and in 1977 in a telegram to President Carter to remove the sea-level canal provision as part of any treaty with Panama. The 1977 telegram is included for the record.

While the language in H.R. 1716 merely sets out the requirements of Article XII, we continue to see no need for a sixth major sea-level canal study (the last one completed in 1970 cost the taxpayer $24 million dollars) at this time, since the engineering aspects have already been covered. Any further update of a sea-level canal study unless it included an extensive environmental analysis far broader then the EIS which the State Department claims would be done, would only lend momentum to efforts to proceed with such a project. Therefore we urge that the implementing legislation be written to avoid triggering any sea-level canal study at this time.

Thank you for allowing these comments, specific responses to the questions submitted to us are attached.

Question. What views do you have as to the environmental ramifications of the Panama Canal Treaty and related agreements? How should the implementing legislation deal with such ramifications, particularly the detrimental ones? What provisions should be added to the legislation?

Answer. First, paragraph 1 of Article VI commits the U.S. and Panama to implement the Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. Section 2 of H.R. 111 (Purpose of Act) should include the wording, "to insure that implementation of the Treaty is carried out in a manner consistent with the protection of the natural environment of the Republic of Panama. (No such section exists in H.R. 1716). The final inplementing legislation should include the above wording as a purpose of the act.

Second, the environmental ramifications of the Panama Canal Treaty range from protection of the Canal Zone and its wildlife and forests, to environmental aspects of running the canal, such as dredging and chemical and biological control of weed populations. It is hard to foresee all the possible impacts that implementation of the Treaty will bring. That is why the JEC should have the staff and capability to undertake a wide range of studies on a variety of issues. These should include:

(a) continued baseline studies of Atlantic and Pacific populations to help determine the effects of possible sea-water pumping into the present canal;

(b) studies to determine the impacts of deforestation and to monitor the effectiveness of the Watershed Management Project which the U.S. AID is funding with a loan of $10 million;

(c) studies to determine the impacts of dredging and chemical and biological control of weed populations. 2, 4-D Amine Salts and Diquat are currently being used for weed control in the canal. 2,4-D Amine Salts are now under EPA's R-PAR process and may be taken off the market while Diquat is largely ineffective in turbid waters.

The implementation legislation can clarify, by incorporation into the purposes of the act, that the intent of the legislation will be to protect the natural envirnoment of the Republic of Panama. Furthermore, the Panama Canal Commission as set out in Sec. 101 of H.R. 111 should be required to promulgate rules and regulations to carry out the intent of the various environmental laws of the U.S.

Question. What role do you see for the Joint Commission on the Environment under the new treaty arrangement? In reference to the role you do envision for the Joint Commission on the Environment, which elements should be placed in the legislative provision for the Joint Commission and which should be adopted by administrative rule?

Answer. The role of the JEC has been discussed previously. It should be independent of the Panama Canal Commission, with a secure funding source with paid staff and Commissioners. At a minimum the elements outlined in Sec. 106 of H.R. 111 should be placed in the legislation except for U.S. Commission members serving without compensation. Legislative provisions should be made for a funding source and perhaps some tie in with the Panama Canal Consultative Committee.

Question. What projects should the U.S. undertake, particularly in connection with the implementation of the Panama Canal Treaty, to protect the environment? How should initiatives be financed?

The most obvious vehicle is the Watershed Management Project. While it does not meet all the needs of the watershed and is still somewhat incomplete as to final planning, we fully support this effort and urge that AID make available the $10 million dollar loan. Further consultations should take place to make sure that adequate monitoring of the project is undertaken and to assess steps which still need to be completed to insure that institutional development, educational activities, watershed management activities, forest reserves establishment and maintenance, reforestation, soil conservation and pasture improvement are carried out. Ideally, these initiatives should be financed either through tolls, international financing or the Panamanian government. We should not hesitate, however, to make monies available to Panama directly, especially in view of the low payment for use of the Canal Zone in the past by the U.S., for projects to protect the environment of the Canal Zone.

Friends of the Earth,
Washington, January 30, 1979.

President Jimmy Carter,
The White House,
Washington, D.C.

Dear Mr. President: The recently ratified Panama Canal Treaties call for the establishment of a joint feasibility study of a Sea-level Canal in Panama (Article XII) and a Joint Environmental Commission (Article VI).

Conservation and environmental organizations voiced their opposition to a Sea-level Canal in 1975 and again in 1977. A $24 million dollar, six-year study (built on four previous studies) completed in 1970 generated information on the engineering and route selection of a Sea-level Canal. Major shortcomings of that study concerned the lack of ecological information needed to make a determination of the environmental effects of such a project.

The Norwegian Assocation for Ecology has expressed concern about proceeding, stating, "Expertise of marine biology must ensure that the final decision about realizing the project is firmly based upon adequate ecological knowledge". If decisions are to be made on the feasibility of such a project, the first order of business should be a long-range scientific effort to assess the environmental impacts and ecological effects of a Sea-level Canal.

In general, however, we see no need for haste and recommend that a decision concerning a Sea-level Canal study not be made part of the current implementing legislation and that the Administration oppose all Congressional efforts to legislate such an effort at this time.

Concerning the Joint Environmental Commission, we view this body as one similar in fashion to our own Council on Environmental Quality, that is, a body clearly charged with addressing ecological concerns and advising on environmental problems such as deforestation, the pumping of sea-water into the existing canal, and the protection of the natural resources of the Canal Zone. We urge that the strongest possible environmental committee be created, staffed by persons from private life committed to environmental protection.

Sincerely

David R. Brower, President, Friends of the Earth; Russell E. Train, President, World Wildlife Fund—U.S.; Toby Cooper, Program Director, Defenders of Wildlife; Pamela Deuel, Legislative Coordinator, Environmental Action, Inc.; Brent Blackwelder, Washington Representative, Environmental Policy Center; Douglas W. Scott, Northwest Representative, Federation of Western Outdoor Clubs; Lewis Regenstein, Executive Vice President, The Fund for Animals, Inc.; Dr. David S. Clafling, President, International Society for the Protection of Animals; T. Destry Jarvis, Administrative Assistant, National Parks and Conservation Association; Brock Evans, Washington Representative, Sierra Club; Marni Holbrook, Environmental Associate, Izaak Walton League of America.

[Note.—Text of a telegram sent to President Carter by eleven national environmental organizations on September 6, 1977, the latest of a series of contacts with the Ford and Carter Administrations urging that a sea-level canal be dropped from treaty negotiations.]

Mr. President: Recent reports on the State Department's negotiations with Panama concerning the interoceanic canal indicate that a serious environmental issue is involved. The negotiators for the United States have included a provision in the Panama treaty that would grant the United States a long-term option to build a new interoceanic sea-level canal and require that a report be made on the feasibility of building such a canal.

Conservation and environmental organizations voiced their opposition to a Panama sea-level canal to President Ford in 1975. We regard a treaty provision of this kind as prejudicial to the thorough, rational consideration of the issue. Neither the Congress nor the several relevant agencies in the Executive Branch have approved it or even seriously considered the matter. The State Department has never been authorized to negotiate for a treaty provision on the sea-level canal. Their Environmental Impact Statement on the Treaty comes far too late for us to make any meaningful response before the Treaty signing ceremony tomorrow.

There are important reasons for our concern. Marine scientists have repeatedly warned against a Panama sea-level canal (as well as salinization of the current canal system), on grounds that a canal of this design would eliminate the present freshwater barrier to intermixture of the two distinct ecosystems on either side of the Isthmus of Panama. Should this freshwater barrier be eliminated, by pumping sea water into the existing canal, for example, the result could be tremendous damage to the fish and other marine organisms of both the Atlantic and Pacific Oceans, with consquent impact on the large human populations that depend on the seas in this part of the world.

A National Academy of Sciences Panel on the sea-level canal in 1970 warned of "grave potential dangers" that could result from such a project. The panel said:

"Joining two oceans with a sea-level canal is a gigantic natural experiment. Its consequences are unforeseeable. To forego the relevant biological research prior to and during the construction of a new canal would be like preparing to put a man on the moon and neglecting to ask him to make scientific observations and collect samples. A new canal will affect the animal and plant life of the two oceans, but what these effects are cannot be determined unless the nature of the differences between the biota and ecosystems of the two oceans are first carefully established through years of intensive research."

The results of the National Academy of Sciences current attempt to quickly pull together all new information on the issues concerning a sea-level canal merely document the fact that the biological studies recommended in 1970 have never been carried out.

Advocates of the sea-level canal claim there is a technological solution to the problem of biological exchange, but no solution has yet been proposed in sufficient detail to allow evaluation of its effectiveness. All the proponents have to offer is vague promises.

The undersigned organizations believe the State Department should not inject the sea-level canal issue into the current treaty negotiations with Panama, centering as they do on questions of sovereignty and administration of the present canal. A sea-level canal provision in a treaty would not only prejudice later consideration of the merits of the project, but it would also lead Panama to expect the United States to build a new canal, even though no decision has yet been made on it by this country.

Dr. Stephen R. Gibbs, an economist for the University of Washington's Institute for Marine Studies, said in testimony before a House Panama Canal Subcommittee that a new canal "would be a net economic loser for whoever undertook it." The sea-level canal represents not only an economic loss but a likely environmental disaster as well. We strongly urge you to instruct the Secretary of State to cease negotiating for a sea-level canal provision as part of any treaty with Panama.

John W. Grandy IV, Executive Vice President, Defenders of Wildlife; Peter Harnik, Coordinator, Environmental Action, Inc.; Brent Blackwelder, Washington Representative, Environmental Policy Center; Douglas W. Scott, Northwest Representative, Federation of Western Outdoor Clubs; David R. Brower, President, Friends of the Earth; Lewis Regenstein, Executive Vice President, The Fund for Animals, Inc.; Sir John G. Ward, President, International Society for the Protection of Animals; Jack Lorenz, Executive Director, Izaak Walton League of America; T. Destry Jarvis, Administrative Assistant, National Parks and Conservation Association; Godfrey A. Rockefeller, Executive Director, World Wildlife Fund; Celia Hunter, Executive Director, The Wilderness Society.

Mr. HUBBARD. Our final panelist is Prof. Nicholas A. Robinson, a member of the board of directors of the Sierra Club, chairman of the club's international committee; Panama Canal Task Force; chairman of the law committee and a member of the bar of the State of New York.

STATEMENTS OF DR. PAUL CAMPANELLA, JRB ASSOCIATES; MICHAEL WRIGHT, DIRECTOR OF INTERNATIONAL PROGRAMS, NATURE CONSERVANCY; JOHN HENDRICKSON, ENVIRONMENTAL ADVISER AND SENIOR STAFF OFFICER OF THE U.S. SECTION OF THE INTERNATIONAL JOINT COMMISSION; AND NICHOLAS A. ROBINSON, MEMBER, BOARD OF DIRECTORS, SIERRA CLUB

Dr. CAMPANELLA. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to discuss some of the environmental issues related to legislation to implement the Panama Canal Treaty.

My expertise is in tropical ecology and environmental management. And I have roughly 12 years of experience working in Panama. I served with the Smithsonian Institution and the Gorgas Memorial Laboratory as a research scientist and with the Panama Canal Agency and have done some consulting work in Panama.

Recently, I returned to Panama as a consultant to the USAID Mission on a watershed management project. I have more than 11 years field experience in ecosystem analysis and environmental management in Central and South America and presently am director of international environmental programs for JRB Associates of McLean, Va.

As a result of my work related to the treaty, the treaty environmental impact assessment and the recent Office of Technology assessment report to the House Committee on Merchant Marine and Fisheries, I am conversant with the treaty and many of the potential impacts on the quality of the human environment that have been identified. I might add that I sense that the committee members are sympathetic to the need for protecting the environment of the Panama Canal.

The principal vehicle that has been proposed to exercise this environmental oversight on the operation of the Panama Canal is the Joint Commission on the Environment.

Much of what has been written or spoken on the subject of the proposed Commission by those responsible for the treaty has been vague. Since the treaty signing, there has been only cursory discussion of the structure, role, and level of involvement and the funding of this committee.

Section 106 of H.R. 111 specifically provides for a commission of six representatives, three from each country. From the description of the Commission, it appears that the intent of the drafters of the proposed legislation is to have this group serve in a review and advisory capacity to both governments with respect to the impacts resulting from treaty implementation.

What I hope to do is offer the members a few comments to frame the situation and give you a general impression of some of the probable impacts of treaty implementation and in this way we can gain some perspective on the role and level of involvement of the proposed commission.

I mean in this respect there is no national policy, nothing that would cause close investigation of environmental impacts on development projects.

The canal watershed is comprised of some 326,000 hectares of land, the majority of which presently lies in the Republic of Panama. Following treaty implementation in October 1979, all but a very small portion of this land will come under the complete jurisdiction of Panama. This includes, with the exception of the land administered by the Smithsonian Institution, almost all of the biologically important lands and all of the areas deemed critical to the continuous supply of fresh water necessary for successful canal operations.

It is clear that management of, and responsibility for, these lands rests with the Panamanian Government. What is left is a small strip of land on each side of the canal which is necessary for maintenance and operations of the Canal. This land is principally devoid of forest and consists mainly of administrative buildings, housing, warehouses and docks, areas which are clearly important to daily operations but not relevant to the long-term integrity of the entire watershed.

Environmental affairs in the Canal Zone are presently administered by the Environmental Quality Committee of the Canal Zone Government and various environmental committees of the several branches of the U.S. military. They derive their authority from a selective mixture of U.S. laws, Executive orders, and administrative regulations—that is, NEPA, FWPCA, Endangered Species Act, Army Regulation AR-200, Canal Zone Code, CZAR, et cetera.

Successful administration of these various regulations is sporadic at best and depends to a great extent on the interest and dedication of the individuals in charge of the various committees.

Historically, there has not been an aggressive approach to environmental management in the Canal Zone. The undertaking of new environmental initiatives are constrained by a lack of funds and clear administrative mandates as to the role and area of responsibility. Upon implementation of the Treaty the situation will be further confused by the dissolution of the Canal Zone Government and all administrative responsibility for applicable U.S. environmental regulations.

The principal impact of the Panama Canal Treaty and related agreements will be to focus Panamanian national development priorities on the area formerly occupied by the Canal Zone. The Panamanian Government's development planning through 1985 stresses growth in the industrial and agricultural sectors of the economy. The plan bases its optimistic projections on taking full advantage of the country's natural resources.

The development of Panama's natural resources has occurred on a small scale and in an uncontrolled manner. The major exception is the large scale conversion of forest ecosystems to agriculture and pasture land through traditional shifting agricultural techniques over the last 50 years. The utilization of other natural resources, such as minerals and water, has been limited; therefore, irreversible damage like the desertification process occurring over much of tropical Africa, has been minimized.

However, the current scale of thinking and approaches to development of the natural resource base raises some questions about potential conflicting interests between longrange conservation of the environment and short-range development objectives. Concern for Panama's long-term economic development and environmental quality are raised for the following reasons:

(1) Past and present development actions have been in response to immediate needs without due consideration for long-term cumulative costs or benefits. There are no mechanisms in the planning process to call attention to the potential impacts of development and more important, there is no planning process to determine how much environmental protection Panama can afford consistent with the interdependent goals for other competing social concerns.

(2) Few protective measures have been instituted to mitigate and to monitor the potential adverse effect of development activities nor are there means to enforce the existing laws.

(3) The overlapping of administrative responsibilities in the areas of resource planning and economic development, land use, public services, and environmental protection among various ministries and semiautonomous agencies has resulted in neglect, misuse and loss of the country's natural resources.

Until recently, little attention has been paid to the importance, within the context of Panama's long-term development effort, of managing the renewable natural resource base. I think it would be unfair to say there is no awareness among planning officials of the significance of man's impact on the environment. More accurately, the awareness is confined to a small fraction of the policy-making community and these individuals do not have the political leverage sufficient to generate a serious governmental commitment to the human environment in the planning, design, and implementation processes of development-related projects.

Over the last 18 months, the environment has become a greater issue in Panama. Officials at all levels of the Government of Panama are awakening to the realization that the watershed plays a unique role in both the economic and social development of the country. The treaty itself was the subject of an environmental impact statement and several U.S.-based environmental groups evaluated the consequences of treaty implementation.

As a result of this scrutiny, more Panamanians and Americans became aware of the magnitude of the deterioration of the resource base, the potential for even more serious negative consequences, and the implications of the destructive trends on Panama's long-term development.

Several recent occurrences are likely to enhance the perception of environmental problems in Panama. First, in late 1977, the Government of Panama requested assistance from USAID to develop a capacity to design and implement watershed management programs that would lead to a more rational use of Panama's renewable natural resources. From an environmental point of view, rational development of watershed areas will insure that current energy and water quality and quantity levels are maintained and planned levels can be achieved. In addition, the preservation and restoration of rapidly depleting watershed resources are, according to many experts, essential to efficient operation of the Panama Canal.

The resultant AID project, which was recently approved for loan funding by both countries, represents in my opinion a realistic approach to some of Panama's most significant environmental problems given the political and socio-economic constraints mentioned previously.

Second, the ready acceptance of the concept of a Joint Commission on the Environment and the planning and reorganization going on within the Panamanian Government, in response to the recently approved AID watershed management plan, are important indicators of Panama's willingness to cooperate in environmental protection initiatives.

However, recognition of a problem and action to effect a solution are distinct and often unlinked governmental processes, and it is here that the environment is in trouble. Given the limited resources and large number of competing needs in Panama, aggressive program of environmental management might not be granted much weight in the distribution of these resources. Political and economic factors in determining resource usage tend to be particularly influential in the short run. Thus, the creation of jobs and the development of industry and agriculture will probably take precedence over concern for the environment until such time that the degradation is perceived as a negative impact on the development process.

Given the general lack of high level concern for environmental problems and the lack of a strong environmental constituency, the Panamanian Government will probably not be pressed to give these potential impacts a high priority. What is more important, there will not be a turnaround in this situation until a large segment of the public and private sector is made aware of the serious nature of the environmental degradation.

In my opinion, the Joint Commission can play an important role in developing an environmental consciousness in Panama. I envision the binational group functioning as a consultative body to deal with environmental matters. The Joint Commission on the environment should have no administrative ties to either the Panamanian Government's Panama Canal Authority or the Panama Canal Commission. I feel it must be given the authority to operate independently as a center for:

Collecting, analyzing, and disseminating information; alerting both countries to emerging problems; and planning solutions to selected environmental concerns.

The acquisition of information and its analysis and dissemination is essential if the two governments are to be kept informed of trends, developments and issues that need immediate action or may need attention in the future. Many problems that the Commission will be asked to deal with are jurisdictional: Water supply or water quality concerns rarely coincide with natural boundaries of the watershed. Shifting public opinions and attitudes will change priorities. Thus, it is important in planning for such a committee to allow for flexibility to meet future needs of society.

Several binational committees exist in North America that might serve as models for the proposed Commission including the International Joint Commission dealing with problems that exist along the United States-Canadian border; and the International Boundary and Water Commission, which is concerned with the United States-Mexican border. However, the United States-Panamanian relationship is quite distinct from that which exists between the United States and its boundary neighbors. The existence of political, economic, and technical inequalities might well necessitate a search for a different model. A simple coordinating group may prove too weak and too slow acting to initiate needed actions, whereas a more authoritative commission may meet resistance from local operating agencies, generating more friction than tangible results. I think this is especially true in a situation where the differences in perception of environmental problems between the two countries is so great.

It is important that the Commission be apolitical, have an open agenda and be empowered to propose, not enact solutions. Its primary function should be to provide a continuous flow of ideas and information that benefits government supported entities.

If the Commission is to fulfill its oversite and advisory mandate, it must have a support staff in Panama to collect information, prepare position papers and agendas and advise the Commission members of potential environmental problem areas. In the current climate of opposition to government expansion, it would be wise not to advocate a large support staff. A technical staff or three or four individuals could provide the basic support.

There exists in Panama, in the presence of the Smithsonian Tropical Research Institute and the Gorgas Memorial Laboratory, a large pool of scientific expertise. In addition, the Panama Canal Agency will probably retain hydrological, metereological, and biological support staff necessary to their operation. A system for utilizing the expertise of existing agencies should be part of the administrative framework of the Environmental Commission. This would serve to minimize expenses and avoid duplication of ongoing programs. For long-term or more detailed studies, it would appear prudent to hire outside experts to work with the local staff in an advisory or technical capacity.

The legislation contains no mention of funding other than expenses accrued by the Commissioners while traveling. Funding is of great importance to the proper functioning of the Commission. Environmental planning for the Panama Canal should be organized into a cohesive continuing program that will serve the national interests of protecting and enhancing the use of renewable natural resources well into the next century. A very general joint funding agreement might be sufficient if we were dealing with a country with a long-standing history of achievement in the area of natural resource management.

However, since even a highly concerned country with a well-developed environmental protection ethic occasionally has difficulties funding and administering environmental initiatives it follows, that in relatively unconcerned countries, the commitment will be reduced to the lowest common denominator—at least cost of the least interested party. That obviously sets extreme limits on the amount of binational support.

A number of environmentalists have suggested the Panama Canal tolls as a secure and permanent basis for funding the Joint Commission. I question this source of funding primarily because of my own experiences as the chief environmentalist for the Panama Canal Company. The new Panama Canal Commission will have a number of unique budgetary constraints and operational demands that may prohibit the yearly obligation of a fixed amount of funds to the Commission. Even though many of us accept the idea of watershed protection as an integral cost item in canal operations, we also understand the difficulties, given the vagaries of daily operations and tolls projections, of translating this concept into a fixed dollar commitment.

It would also mean that many long-term resource management projects having a different evaluative scale would be competing for funding along with immediate, highly visible projects like dredging or locks maintenance.

It is clear that further study is needed to identify the source and level of funding that would insure a long-term commitment to the environmental management program. Given the great amount of indecision on this matter, it is imperative that at least the framework of a mechanism for providing funds be addressed in the legislative provision for the Joint Commission. Decisions regarding the commitment of resources by each country and the management of those resources might be more appropriately dealt with by administrative rule.

In closing, allow me to briefly summarize my testimony by addressing the three questions directed to the environmentalists testifying today.

The first question deals with the environmental ramifications of the treaty and related agreements. The immediate impact of treaty implementation will be to stimulate development activity within the watershed, especially along the principal corridors of transportation. Both the severity and form of ecological impacts depend on the kind of development activity and the type of ecosystem in which it is deployed. The decision to develop an area or natural resource is legally an internal decision of the government or of a private group, with the consent of the Panamanian Government.

As a national prerogative, it is commonly motivated by political considerations, as well as by economic factors. Therefore, the decision to pursue one course of action or another can best be influenced by a continuous flow of ideas and information that increase the private and public sector's perception of the problems.

In the end, it is the different perceptions and conceptions of the problems that will define and delimit the nature of any institutional response to regulate. In this regard, the Joint Commission on the Environment is an essential provision of the implementing legislation. A binational, apolitical commission with the authority and support to collect, analyze, and evaluate environmental data and report this information to the respective governments, as well as to the public, is probably the most significant way to influence the long-term behavior of either government in dealing with environmental problems.

The second question addresses the role of the Joint Commission on the Environment. As I have just mentioned, the most important function of this group is to keep the two Governments informed of trends, developments, and issues that need immediate action or may need monitoring in the future. Although the implementing legislation broadly defines this structure and advisory nature of the Commission, it fails to address the important issues of funding and onsite staff support.

The final question concerns projects that the United States might undertake, in connection with the implementation of the treaty, to protect the environment. Based on my experience in numerous developing countries of Latin America, I know that the effective and rational utilization of natural resources is possible only if the Nation develops its own appropriate strategy for dealing with environmental problems.

The recently approved USAID watershed management project is a creative and highly ambitious effort to deal with Panama's immediate environmental problems. If successful, it will provide a good institutional base and cadre of trained personnel to build on. However, this single 5-year project cannot be expected to develop into a cohesive continuing program of natural resource management. To accomplish this objective, we must continue supporting environmental projects of this nature and encourage new environmental initiatives by other national and international groups.

Finally, we should give some thought to strengthening ongoing U.S.-supported binational programs in Panama. Over the last 5 years, the Smithsonian Institution has been a leader in promoting the transfer of scientific knowledge to Panamanians through cooperative work-study agreements, scholarships, and training programs. Activities of this nature are invaluable to Panama as they augment the scientific and technical manpower pool and strengthen Panama's capabilities to plan and implement long-term environmental management schemes.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Dr. Campanella.

Mr. Wright?

[The prepared statement of Mr. Wright follows:]

STATEMENT BY R. MICHAEL WRIGHT, DIRECTOR AND GENERAL COUNSEL FOR INTERNATIONAL PROGRAMS—THE NATURE CONSERVANCY

Mr. Chairman and Members of the Subcommittee: I thank the Committee for inviting me to testify today on behalf of The Nature Conservancy, and to delineate our interest in the pending legislation to implement the Panama Canal Treaty of 1977.

THE NATURE CONSERVANCY

The Nature Conservancy is the major private U.S. conservation organization whose resources are devoted to the identification and protection of ecologically significant land. Over 1.3 million acres of forests, swamps, marshes, prairies, mountains and beaches have been acquired by the Conservancy in more than 2,000 separate transactions since our first project 27 years ago.

Four years ago the Conservancy initiated a modest international program in order to share these effective techniques with the peoples of the Caribbean and Latin America, and to a more limited extent, Canada. The island nations of the Caribbean as well as many of the developing countries of Latin America are confronted by ever-increasing pressures due to rapidly growing populations, serious economic difficulties, unguided development and poor land use management. Directly associated with the human aspect of these problems is the destruction or degradation of each country's environment. Because Man's well-being and often his economic base is linked to his environment, it is essential that the critical components of natural diversity—the soils, water supplies, and plant and animal species—are conserved and managed prudently. Unfortunately, because of financial constraints and a lack of trained personnel, many developing countries practice haphazard approaches to both development and conservation.

The Conservancy's international involvement has included assistance with protection of several major natural areas in Costa Rica, Corcovado National Park and Monteverde Cloud Forest Preserve, in cooperation with both public and private institutions, assistance with major additions to national parks on two Caribbean islands (Trois Pitons National Park in Dominica and Slagbaai on the Dutch island of Bonaire), several preserves in Canada and most recently acquisition in Canada of one of the most important areas for migratory waterfowl between our two nations, Long Point in Ontario. It is in furtherance of this goal to assist with preservation of critical natural areas outside the United States which lead to our interest in the

Panama Canal and the Treaties (subjects which would otherwise be rather far beyond the Conservancy's area of knowledge or concern).

PANAMANIAN ENVIRONMENT

Within the Canal Zone scientists have identified the Pipeline Road rain forest as an area of international scientific importance. The U.S. Fish and Wildlife Service has stated that there are twenty endangered species in the Pipeline Road area and this same area is internationally famous for its bird life. The forest, together with Barro Colorado Island, also provides access for species migrating between North and South America. A great degree of research has been conducted along the Pipeline Road providing a baseline of educational and scientific knowledge quite unique for tropical forest areas. The tropical forest is the natural system disappearing faster than any other type. The Pipeline rain forest is one of the most accessible anywhere in the Hemisphere and therefore of immense value for science, research and education.

The close proximity to the Smithsonian Tropical Research Institute (STRI), one of the world's esteemed scientific organizations and its facility on Barro Colorado Island makes this forest of even greater direct benefit to the United States as well as Panama. It is difficult to overemphasize the importance of STRI with ready access to the rich and complex Pipeline Road forest for knowledge of tropical biology and ecology. The establishment as part of the treaty process of Barro Colorado Island as a Nature Monument with STRI as custodian was a farsighted decision by both governments.

While these reasons briefly explain the high priority placed on the Canal forests by the international scientific community, there are other justifications for protection of these forests. First and foremost, the Pipeline Road area is part of the critical watershed which must be protected to maintain the basic economic viability and operations of the Canal. Panama has already indicated that it recognizes the special relationship between the Canal and the natural systems upon which the Canal depends. In considering the compatible uses of these watershed areas, a high priority should be placed on establishing a significant portion of the Pipeline Road area as a national park or wildlife reserve, and we understand such a declaration is eminent. Such use would certainly be compatible with watershed protection. We believe that it would also create revenue. Panama has a unique "captive audience" of people who pass through the Canal, many without ever leaving their boats. With 285 species of birds in the readily accessible Pipeline Road area, 230 of which do not occur outside the Tropics, tourism could be generated if the area were properly promoted. The part would also provide employment through the need for park guards, guides and other services to accommodate and assist visitors. It has been suggested that indeed a greater number of people might be permanently employed in this manner than the area could support after it is cut over. No economic analysis has yet been undertaken to verify this proposition but agencies must look into this question before the area is irreplaceably committed to other uses. Once gone, the choice will never again exist.

There is another justification which is difficult to state exactly and yet which may, over time, be the strongest economic argument of all. The tropical forests are already recognized as a biological resource of incredible value yet we have only just begun to find economic uses for what exists in this richest of all expression of life on earth. The Brazilean, Amaro Theodoro Damasceno, said it beautifully when the described ill-conceived farming and logging in tropical forests as "destroying gold for the production of silver." Of course, it is difficult when facing demands on these forests in the present to talk about what might be found in them someday in the future—it requires great leadership and foresight. Yet that future may not be too far distant. To cite just one example, research is already underway at Costa Rica's Tropical Science Center on the use of selective cutting of certain tropical wood which can be processed into cattle feed. If successful, this approach can support far more cattle than the same land when cleared of forest. For this process to work on a sustained basis, however, it is essential that the basic integrity of the forest remain intact in order that the fungi which are the key to the system can survive. As research on tropical forests continues one thing does appear clear—the forest community seems to be an indispensable component of the natural productivity system upon which any sustained development will depend both in the Zone and elsewhere in Panama.

I would not want to miss the opportunity to congratulate the U.S. Agency for International Development (AID) for the recognition they have demonstrated of the relationships between the environment and development in their recently approved Panama Watershed Management Project. This project, a response to Congressionally mandated concern, is an imaginative attempt to deal with these complex issues in an area of increasing population conflicting with ecological and economic needs.

The same accessibility which makes the Pipeline Road forest so important internationally applies even more strongly for the people of Panama itself. To have such a recreation and education resource so near to the major population centers is extraordinary. A report on Ecological Principles for Economic Development stated, "Since wild areas are becoming increasingly scarce, their value increases proportionately with passage of time and disappearance of comparable areas." Wild areas of rain forest are generally disappearing and especially those such as the Pipeline Road which by the year 2000 will be accessible to an estimated 1.7 million people. International recognition, tourism and revenue can help finance creation of parks and spread the costs of operating them; however, the areas referred to should be preserved for the education, enjoyment and future of the people of Panama.

Mr. Chairman, I hope this brief description of the biological richness and scientific and educational value of the existing Canal forests will explain why conservationists have been interested in the Panama Canal Treaty process.

AREAS OF ENVIRONMENTAL CONCERN

The environmental issues raised by the Ad Hoc Panel of experts and the subpanel are well represented in the Findings of the Office of Technology Assessment (OTA) paper on "Environmental Issues Affecting the Panama Canal." The appendices to that paper provide additional information, consensus views and areas of disagreement or uncertainty. I must compliment OTA for their receptive and careful pursuit of information which could be helpful to the Committee. Rather than repeat the points contained in the OTA paper, I will make two general observations prior to focusing upon the Joint Commission on the Environment (JCE).

As the OTA paper correctly observes, several conservation organizations were concerned that the Final EIS did not provide sufficient assurance that the AID project, which was a key element to protecting the Panamanian environment, would be approved. It should be stated for the record that this project has in fact continued to move forward and I understand is in its final stages. Given the innovative design challenges and the minimal number of environmentally trained personnel at the disposal of either AID or Panama, we are most pleased with the project in fulfilling both the assurances of the EIS and the Congressional mandate to AID on the import of environment and natural resources in the development process.

The reality of extensive and increasing deforestation within the Canal Watershed was recognized by the OTA panel. It was also generally but not universally agreed that this deforestation threatens the water supply of the Canal and hydroelectric potential in the watershed, the supply of water and its quality of the major population centers, the quality of the soil and through erosion the dredging requirements of the Canal. The degree of alarm at over these threats may depend upon whether one's concern extends beyond the year 2000. It appears that the environmental consequences of today's abuse of the forest may not appear until the next century. I would contend that we have both an obligation and certainly a vital interest in the continued viability of the Canal and therefore must act now to protect the Canal forests in any way we can. Furthermore, we should take a most conservative possible position regarding the future of these forests. The cost and time involved in trying to reestablish the forests after they have been cut (if indeed it can be done at all) far outweighs the costs of protecting the forest now.

We are pleased by reports of U.S.-Panamanian cooperation to deal with the existing immediate problems of illegal cutting in the Canal Zone and with the AID program as a first step toward dealing with the future pressures to increase cutting in the watershed.

Prior to turning in detail to the Joint Environmental Commission I would like to point out that the absence of comments concerning issues relating to pollution, whether air or water, health, the potential impacts of a sea-level canal, etc. does not indicate lack of environmental concern over these issues. These are areas, however, where neither I nor the Nature Conservancy possess any expertise which could assist in your deliberations.

JOINT ENVIRONMENTAL COMMISSION

Mr. Chairman, I would like to now focus my remarks on the Joint Commission on the Environment (JCE) in rather more detail. I feel strong (perhaps even binding) regulatory power for JCE is not practical and given the possible tradeoff over jurisdiction, may not even be desirable. It is much more important that the JCE have broad jurisdiction (geographically and in subject matter) than that its decisions or studies have a binding effect.

JCE JURISDICTION—GEOGRAPHIC AND SUBJECT MATTER

The jurisdiction of the JCE under the treaty could range from "the natural environment of the Republic of Panama" in any way that it is impacted by the Treaty implementation to the narrow operational area of the Canal and perhaps even in that area only on those issues brought directly to it by both governments. Which view of jurisdiction prevails may depend in part upon whether the JCE is viewed as attempting to improve and protect natural values in Panama or as a guise to impose particular actions on Panama.

I feel the geographic jurisdiction (at least by informal agreement) should cover the Panama Canal watershed and deal with any environmental issues arising therein. The governments should initially provide it with a broad brief to review and report on the whole range of relevant environmental issues which might arise anywhere within the Canal watershed. The ability to initiate its own studies will be an important aspect of the JCE. Decisions, conclusions or recommendations of the Commission should be public but not binding.

The early history of our own Council on Environmental Quality (CEQ) demonstrates the importance of the annual review of the state of the environment as a function. Both governments should encourage the JCE to undertake a similar task. It is also important that the JCE not become an implementing agency. The JCE studies and their recommendations should represent the technically best solutions while the more political decisions on implementation remain within the other government agencies.

The ideal JCE which we visualize would be a means to raise and understand a broad range of environmental issues over the whole Canal watershed. The JCE role would not be to regulate any particular activity but rather to protect and preserve existing values to prevent needless loss and to moderate damage if it is unavoidable. The JCE will operate to its full potential if it is able through fact finding, analysis of alternative courses, transfer of new technologies, and by maintaining a long term perspective to help the parties concerned with the Panama Canal develop environmentally sound workable solutions.

JCE COMMISSIONERS AND STAFF

The Commissioners (a total of 6) should act independently (i.e., without instructions) and be of highest "quality." They should have recognized credentials sufficient to inspire confidence in their integrity, competence and objectivity. Scientific and a strong environmental background would be a great asset for all, but certainly at least one, of the Commission members. We have no position on whether the Commissioners must include private as well as public members or whether Congressional confirmation is essential.

I generally concur with the view that the International Joint Commission-Canada-U.S. (IJC) is the most relevant model for the JCE; however, unlike the IJC, I feel in the case of Panama that all six commissioners should be half-time. Should such a suggestion be followed, the quality of the staff and especially the leadership of a knowledgeable staff director become particularly important. The IJC experience with the use of advisory panels and access to gaining experts on subvention from other government agencies and indeed to contract with private organizations is an excellent precedent. This will allow a smaller core staff for the JCE, smaller budget and greater range of expertise. Not only should the commissioners themselves not be instructed by their governments, it is equally important that loaned experts remain independent, technical people and not be "instructed" by their own agency. Furthermore, the loan of such experts and other in kind service is another way for Panama to help share support of the JCE without utilizing its scarce cash reserves (i.e., costs should wherever possible be borne by the "donor" agency).

Fortunately for the JCE it will have ready access to a tremendous resource of knowledge with the proximity of Smithsonian Tropical Research Institute (STRI) and the Gorgas Memorial Laboratory. Continued financial support of these institutions will be an important indirect act of support for the JCE. As indicated in my letter to OTA, I am uncertain how to assure that this knowledge is brought to bear at the earliest time without possibility of risking the critical apolitical character of these institutions.

I concur most strongly with the position of the Smithsonian Institute that the Chairman of the JCE should be invited to the meetings of the Panama Canal Commission in order to meaningfully fulfill the obligation to consider environmental issues affecting the Canal at the earliest possible moment.

FUNDING

Concerning funding of the JCE, my initial view was to look to canal tolls particularly being aware of the financial constraints of Panama (and increasingly here at home as well). I have come to the belief that the need to find financial support that does not jeopardize the JCE's objectivity (in reality or appearance) outweighs the financial difficulty. This is particularly true if the JCE can meet a good part of its financial needs with people loaned from other agencies and in kind services, although this type of semi-transient staff will make the importance of a top caliber core staff all the more critical. We recognize the desire to minimize costs relating to the Treaty and indeed in other areas as well but it is my feeling that the requisite sums will not be unduly burdensome. We urge the Congress to authorize and appropriate up to $400,000 for fiscal 1980 for the operations of the Commission and its staff. Supplemental appropriations might follow completion of the JCE program priorities.

Mr. Chairman, within the last several years the importance of tropical rain forests and the intimate relationship between environment and development has been increasingly recognized. The Panama Canal brings these issues together in a situation where the United States can assist with preservation of these values while at the same time protecting the vital interest of the United States in an operating canal. We urge this Committee to express its intent to the House that the Joint Commission should serve as a strong symbol of the cooperation between the U.S. and Panama over these issues of shared concern.

Mr. WRIGHT. I want to take the opportunity to thank the committee for inviting me today and also to thank the Office of Technology Assessment for the job they did on environmental aspects of the Panama Canal treaties. I commend the OTA report to the committee for your consideration.

I won't read my statement. The members of the committee have it and have had a chance to look at it.

I will say first that I agree in almost all respects with Dr. Campanella and I will therefore only go through and highlight several points that he made in his testimony.

The organization for which I work is the Nature Conservancy. The conservency has always focused attention very specifically on a piece of land, piece of natural landscape that needs to be preserved because of the ecological importance. For this reason we became involved with the Panama Canal treaties through our concern for the Pipeline Road Rain Forest in the Canal Zone, an area which has long been recognized for its scientific and ecological importance.

Environmental groups have expressed concern about other issues, including air and water pollution and the threat of a sea level canal. These are questions of great importance but are not issues to which I can speak with any expertise.

Given our concern has been with the Pipeline Road Forest, I was talking to people in Panama last night. It is my understanding although I have no written confirmation, that President Aristides Royo of Panama will shortly announce the intention of his government to create a park to come into effect in October. It has been reported that the park will occupy a larger portion of the critical Pipeline Road Rain Forest than any of the environmental groups had hoped would be possible. If this report turns out to be accurate, it is an act of courage on the part of Panama and an ecological and scientific decision of tremendous importance.

If the OTA projections are correct, by the year 2000 this park will be accessible to 1.7 million people. If they are able to maintain it, I think the Parque Nacional de la Libertad, as I understand it will be called, is going to be a real asset for the Republic of Panama, both for education and other uses.

To quickly highlight several points which I made in my statement and which compliment Dr. Campanella's testimony:

One is the importance of the Smithsonian Tropical Research Institute—STRI—as a resource, in its own right, and also for its great potential value to the Joint Environmental Commission.

I think STRI is a real asset, both to Panama and to the United States.

The second point is to compliment the U.S. Agency for International Development—AID—for the way it has responded in Panama to the charge mandated by Congress that AID begin looking at the environmental and natural resource questions. One of the first projects to be developed under that new congressional natural resource mandate is the Panama watershed project. I think it is important to commend AID for really struggling with some tremendously difficult questions, environmental questions when they run in conflict with development issues, which always present hard trade-offs particularly when, as you are in this instance, you are dealing with a watershed containing 60,000 people. AID has done a commendable job in trying to find ways for resolving these issues and I think in Panama the AID project will be very important for our long-term relationship.

Turning now to the Joint Commission on the Environmental Commission—JCE—I share the view that this should not be a strong regulatory commission which has the power of stopping projects or let them go ahead. It is an advisory commission. I think it will be most effective when it becomes a conduit for technical knowledge and for concern for the environment, for preidentification of potentials for conflicts (trying to resolve the conflicts before they reach the final stages); and if the JCE is considered this way, its jurisdiction can cover a rather broad area including the total Panama Canal watershed.

The treaty is a little bit vague on the area of jurisdiction. However the JCE physical jurisdiction would certainly not cover all watershed areas under treaty. It is arguable that the JCE's jursidiction would include only the narrow operating area of the canal. Under such an interpretation I do not think the JCE would be meaningful because the real environmental issues are much broader than that. I also believe the JCE should have a fairly broad brief on subject matter to study, on its own initiative, any environmental issues in the watershed.

One model which might be considered, thinking about the commission, is our own Council on Environmental Quality—CEQ—through its studys and annual review, of the state of the environment provides an opportunity at least once a year to sit back and look at what is happening with longer term issues that otherwise tend to get lost in the shuffle of day-to-day concern. In terms of mechanics of operating the best model is the United States-Canada joint commission, one should especially consider its advisory structure.

The number of commissioners which has been mentioned in the Murphy bill, six commissioners, seems to me to be a very workable number. I do not have any strong feeling on that; but six seems perfectly reasonable to me. It is important that at least one of those members on each side have some kind of scientific or ecological expertise. You need to have someone who knows at least what are the key questions and where one might seek answers.

The need for a good staff, I guess it is obvious, but is tremendously important in a situation like this where in my view, all the commissioners should be half time. I think the Staff or Secretariat should be in Panama with one or two as support here in the United States.

The final point is the question of funding. I am one of those who have turned around on that question. I started out feeling it should be part of the canal tolls. I now feel that doing it by separate funding, possibly out of the State Department budget makes more sense. Being placed in with the tolls, will cause it just to get lost in the shuffle as did the Canal Company Environmental Office. Separate funding also provides some oversite.

One final point.

There was a difference in legislation on the question of whether the commissioners should be subject to congressional confirmation. I do not have a strong feeling one way or the other We want to get the highest possible quality people; if confirmation will assure higher quality, I think we ought to do it; and beyond that, I do not think it is terribly important.

Thank you very much.

Mr. HUBBARD. Thank you, Mr. Wright.

Mr. Robinson?

[The Robinson's prepared statement follows:]

Testimony of

Professor Nicholas A. Robinson
Pace University School of Law
White Plains, New York
Before
The Subcommittee on the Panama Canal
Hon. Carroll Hubbard, Chairman
of the
House of Representatives Committee on
Merchant Marine and Fisheries

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March 14, 1979

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Mr. Chairman, distinguished Members of the Subcommittee, I appreciate the opportunity to appear before you today at your invitation to examine the environmental protection measures of proposed implementing legislation for the Panama Canal Treaties of 1977. I appear before you as a member of the Board of Directors of the Sierra Club and the Chair of the Task Force on the Panama Canal Treaties of the Sierra Club's International Committee. My views regarding the environmental aspects of the Treaties have been shaped further by a joint examination of the legal aspects of the environmental measures agreed to in the Treaties now in progress by the Inter-American Affairs Committee and Environmental Law Committee of the Association of the Bar of the City of New York; I am participating in this study as Chairman of the Association's Environmental Law Committee.

At the outset let me commend you for your diligence in examining the environmental issues presented by the treaties. They are of critical importance, as Article VI of the Panama Canal Treaty recognizes in creating a US-Panama Joint Commission on the Envrionment. In this testimony, I shall briefly state the environmental problems which the implimenting legislation should address and how the bills before you might best advance our nation's concern for environmental protection in Panama.

I. Environmental Issues

Panama is in a unique and pivotal position as a nation in terms of environmental protection: (1) The Canal itself is a common vector point for much of the globe. Careful sanitary conditions must be observed in the canal area to prevent dissemination of disease. (2) The Canal itself is a critical transportation corridor which requires stable water flows for its locks; the banks of the canal and its reservoirs and lakes must be protected against siltation which reduces available water storage. (3) The avoidance of erosion and siltation depends on protection of the watershed and its tropical rain forests. (4) Panama's Darien Peninsula and its forests are the only barrier to on-land passage from South America to Central America; unless quarantine and other restraints are developed when the Pan-American highway is completed through the Darien Gap, Panama's Gorgas Memorial Institute of Tropical and Preventive Medicine has warned of a transfer of disease from South America to North America. (5) The possibility of a sea-level canal raises substantial issues of ecological imbalance and harm throughout the Caribbean if Pacific coast organisms penetrate the Atlantic. (6) Management of the Canal Zone, and its basic health, conservation, wildlife and other natural resources uses, requires sound environmental practices.

I have outlined these environmental problems more fully in three articles published in the New York Law Journal, copies of which are attached here.

The danger in each of these environmental issues is real.

The Cattlemen's Association and the Sierra Club joined forces successfully to sue the U.S. Department of Transportation to require an environmental impact statement on the Darien Gap Highway extention. In that suit, U.S. District Judge Bryant found that the statement was required in part because "hoof and mouth disease" ("Aftosa") might spread from Columbia, where it is unchecked, north through Panama to the United States. The Judge found that aftosa, "if it spread into the United States could result in the destruction of up to 25 percent of North American livestock and an economic loss of ten billion dollars as well as the extinction of such endangered species as the American Bison."

If the Pan-American Highway is built, the Canal Zone crossing will be the only barrier where controls could be effective. Attorneys experienced in representing clients in the Columbia, Venezuela, and Panama regions doubt that the capacity now exists to check the spread of aftosa north once the highway opens.

What has this to do with the Canal Treaties? Fortunately, a great deal. The Panama Canal Treaty created a mechanism which can address each of the six environmental fields addressed above, and help avert them from becoming environmental problems.

II. The Joint Commission on the Environment

Article VI of the Panama Canal Treaty recognizes that the United States has a great deal of environmental expertise in soil and water conservation, forest management, sanitation, health and other areas, and has provided such expertise when needed in the Canal Zone. For Panama to carry on the responsibilities in the Zone as the United States has done, it must develop further its expertise in these environmental fields.

Yet Panama must do more. It is at the cross-roads of two oceans and two continents. It has a duty in international law to assure that it does not allow its environment to be misused so as to harm neighboring countries.

In Article VI the United States agreed to help Panama in assuming its environmental protection duties in the Canal Zone and more widely.

The Joint Commission covers the protection of the natural environment of all the Republic of Panama. Both nations "shall" consult one another and cooperate in "all" appropriate ways to ensure environmental protection. Deforestation or prevention of aftosa spread are as much the Joint Commission's concern as are oil spills from ships or sanitation in the Canal Zone.

What is more, both nations pledged in the Treaty that each "shall" furnish the Joint Commission with complete information "on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment."

Thus, the Treaty requires a full flow of information and advance consultation with the Joint Commission in order to secure the recommendations of the Commission to protect the environment.

For the Commission's part, the United States and Panama have required that it "shall" recommend to the two governments ways to avoid, or should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty."

III. The State Department's Views

Prior to ratification of the Treaties, the Hon. Warren Christopher, as Acting Secretary of State released a "Statement on the Panama Canal Treaties and Environmental Protection." A copy of his Statement is attached.

I frankly was surprised and distressed that Secretary Christopher never once mentioned the important environmental issues in his Testimony before you on February 15, 1979. Indeed, his failure to attach the importance to the Joint Commission after the ratification which he apparently did before ratification, leads me to believe that the House of Representatives must act vigorously to guarantee that the Joint Commission will function well.

The State Department's down-grading of concern for the Joint Commission was evident also in the testimony before you on February 15, 1979, by the Secretary's Special Representative for Panama Treaty Affairs, Hon. David H. Popper.

He urged that the U.S. members not be subject to Senate confirmation, and that three members from each country would be only an "advisory committee." He made no reference to the staff needs of the Commission nor its tasks.

This studied avoidance by the State Department of the environmental protection role of the Joint Commission contrasts sharply with the more considered position of the Smithsonian, which through David Challinor, urged an adequate staff and that at least one Commission member from each country should be "a scientist with a strong environmental background," and the Commerce Department, which through Deputy Assistant Secretary Samuel B. Nemirow, stressed a willingness to work with the Commission and even be represented on it.

The State Department stated last January 6, 1978, that "It is our intention that the Joint Environmental Commission shall have the staff and financial support it needs to be effective. We will propose that the American members of this Commission include leading science and environmental figures as well as others from the private and public sector."

Ambassador Popper seems to have conveniently forgotten this prior State Department view.

IV. The Joint Commission

To be effective, the Joint Commission should have the following characteristics:

1. A clear authorization in U.S. legislation. Panama might well develop parallel Panamanian legislation.

2. At least three U.S. Members, but preferably four or even five. The prerequisites for each Commissionship should be defined in the U.S. Statute, and all should be subject to Senate confirmation. All would take an oath of office to serve as independent persons, not as instructed delegates. They should have a fixed term of service, of perhaps six years. The terms should be staggered.

3. Of the Commissioner's, one should be a scientist, one should be a distinguished political figure (e.g. past Congressman), one should be an experienced environmental leader, one should be a management expert experienced in the methods of environmental impact analysis, and one should be a natural resource economist experienced in the trade-offs among environmental, commercial health, transportation, and other issues.

4. The Commission needs a staff, resident in Panama, and a staff office in Washington, D.C., to facilitate the work of the U.S. Commission Members. The staff should be full-time, including an executive secretary, staff scientists (marine, soils, tropical forests, etc.), technicians, support staff (secretarial, logistic, communications, etc.). The staff needs the funds and equipment to collect data, analyse it, monitor developments, etc.

5. The Commission needs sufficient staff to attend the many bilateral working group meetings held under the Treaties, and the meetings of the Panama Canal Commission itself.

6. The Commission needs sufficient funds to contract with specialists to obtain expertise as needed. The funds should come from contributions made by both the United States and Panama. Appropriations should be made for this purpose giving the House of Representatives the opportunity for oversight of the Commission's effectiveness.

7. The Commission should be set up as soon as possible. Now is the time for it to help with environmental advice, not later. Its function is to help Panama as it takes over the operations, not after the transition is complete.

V. The Proposed Legislation

Each of the proposed bills may be compared to these standards.

H.R. 111, §106 - This section should be revised to reflect the obligatory Treaty provisions of Article VI. The Treaty creates the Commission, and thus there is nothing legally to be done by way of organic legislation. The section should provide that the President shall appoint, by and with the advice and consent of the Senate, for fixed terms of 4-6 years, the five U.S. Members of the Joint Commission. Section 106 should provide that the U.S. Members would have a support staff in Washington, D.C., and would request an annual appropriation from Congress for the work of the Commission. Section 106 should recognize the Commission as an international bilateral body, similar to the U.S.-Canadian International Joint Commission, with the authority to hire its own staff, promulgate its operating regulations, and exercise all authority necessary and sufficient to meet its obligations under Article VI of the Treaty.

H.R. 1716, §101(a) - This plain authority for the President to name the U.S. Members of the Joint Commission alone is inadequate to assure compliance with Article VI. It eliminates the opportunity for Congressional oversight through either the appropriation process or confirmation process for appointees. Unless this section were substantially expanded to cover the points mentioned above, the matter of environmental protection and operation of the Joint Commission is entirely delegated to the President without the benefit of guidelines or standards. Congress has the constitutional duty to give direction to the conduct of foreign affairs, and it should do so here by establishing the minimal standards set forth above. H.R. 111, as it might be amended as set forth above, is preferable.

H.R. 1511 - This bill would be contrary to the legally binding provisions of the Treaty. H.R. 111, as it might be amended as set forth above, is preferable.

H.R. 1958 - This bill would result in crippling the Joint Commission on the Environment by denying it the funds needed to be effective. Basic U.S. interests in the safe and efficient operation of the Canal and in environmental protection, would be compromised by enactment of this bill. H.R. 111, as it might be amended as set forth above, is preferable.

H.R. 454, §101 - This bill has the same difficulties as H.R. 1716, discussed above. H.R. 111, as it might be amended as set forth above, is preferable.

VI. Conclusion

The Joint Commission on the Environment is a bold step at bi-national cooperation to prevent environmental harm before it occurs. It needs a supportive statutory framework in addition to the Treaty Article which creates it.

Congress can set in motion a sound framework for the Commission. Alternatively, it can abdicate responsibility for the Commission and leave everything to the State Department.

Too much is at stake for Congress to do nothing to assure that the Commission will be successful. The Commission task is to protect our national interest and those of other nations from environmental harm. We should nurture such preventative initiatives.

NAR:hj
Attachments

THE SECRETARY OF STATE
WASHINGTON

STATEMENT ON THE PANAMA CANAL TREATIES AND ENVIRONMENTAL PROTECTION

Since Panama's unique geographic location makes it important to the environment of many nations, both the United States and Panama are conscious of the need to protect the environment and respond to the public health needs of the Canal Zone and the surrounding area.

During the negotiation of the Panama Canal treaties, the Department of State and other agencies of the United States Government recognized the serious environmental implications of the treaties key provisions. The United States noted that the transfer of large tracts of essentially undeveloped territory, comprising much of the Canal Zone, to a country energetically engaged in economic development could seriously impact on the ecology of the area. Accordingly, the negotiators included Article.VI as an integral part of the Panama Canal Treaty. In that article, the United States and Panama commit themselves to implement the treaty "in a manner consistent with the protection of the natural environment." The article also provides for the establishment of a Joint Commission on the Environment, which is to recommend environmental protection measures to the two governments.

Such is the framework for environmental action established by the written instrument. However, it will only be through the joint effort of the two governments, following ratification of the treaties, that the commitments made in the treaties will come into effect. For the United States, this will entail provision of relevant information about the Canal Zone and its resources, technical assistance, as well as resources needed to carry out effective programs of environmental protection. To that end, the U.S. Agency for International Development is developing a project, in cooperation with the Panamanian Government, to provide it with the capability to carry out sound land and water management and reforestation programs.

On the Panamanian side, our diplomatic mission in Panama has noted that the Panamanian Government is taking environmental concerns seriously and has attached a high priority to the problem of protecting the Canal watershed. As evidence of this, the mission reports that both the Panamanian Minister of Planning and the Vice Minister of Agriculture have recently pressed for early implementation of the AID Watershed Management Project. Moreover, in addition to the provisions contained in the Panama Canal Treaty, there is also a basis in international law for U.S. and Panamanian cooperation on environmental matters since both countries are parties to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil and the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which established Barro Colorado Island as a Nature Monument.

It is our intention that the Joint Environmental Commission shall have the staff and financial support it needs to be effective. We will propose that the American members of this Commission include leading science and environmental figures as well as others from the private and public sector. In addition, reports on the state of the environment in the Canal Zone and the surrounding watershed will be assembled and indexed. Federal agencies with expertise relevant to Canal Zone issues will assist in developing information for the Joint Commission on matters which require priority attention. And, recognizing the importance of base-line data showing the current state of Canal Zone ecosystems, including air and water quality, marine life in the adjacent oceans, and flora and fauna, the U.S. will cooperate with the Panamanian Government in assembling that data espeditiously.

The National Environmental Policy Act (NEPA) has provided useful guidance in drafting the Panama Canal treaties so as to avoid or mitigate the adverse environmental effects which might result from the implementation of the treaties. We recognized the importance of the NEPA procedures in formulating environmentally sound policies as well as the value of public participation in the NEPA review process. The final Environmental Impact Statement (EIS) on the Panama Canal treaties, prepared in accordance with the NEPA and issued on December 27, discussed those issues which will be addressed by the

Joint Environmental Commission. And, the public comments submitted regarding the draft EIS have been carefully considered and are reflected in the final Statement. More specifically, the final Environmental Impact Statement discusses current and transitional steps needed to protect the Pipeline Road and other important forest areas. It also analyzes the need for a forestry management program and the dangers to flora, fauna and soils should the natural resources of the Canal Zone not be adequately protected.

Finally, in addition to Article VI, Article XII of the Panama Canal Treaty addresses the question of expansion of the existing Panama Canal to accommodate a larger volume of traffic. In that article, Panama grants to the United States "the right to add a third lane of locks to the existing Panama Canal." With respect to a possible sea-level canal, the article provides for a study of the feasibility of such a canal without making a decision or commitment that a sea-level canal will be built. Any study of the construction of a sea-level canal will seek to be both thorough and objective as it examines both the economic as well as the engineering feasibility of such a project. In addition, the study would fully explore the environmental consequences of a sea-level canal and would address the problems identified in the reports of the National Academy of Sciences. Moreover, an Environmental Impact Statement would be prepared in accordance with the provisions of the National Environmental Policy Act. Finally, I should note here that we do not intend to use nuclear excavation techniques in connection with any effort to enlarge the capacity of the Panama Canal or build a new canal, both for environmental reasons and because of the terms of the nuclear test ban treaty.

In sum, we believe that the new Panama Canal treaties offer a significant opportunity for cooperation between Panama and the United States, not only in the operation of an important international waterway, but also in safeguarding the unique environment which forms part of the Canal Zone.

Warren Christopher
Acting Secretary

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Environmental Law

By Nicholas A. Robinson

Mr. Robinson, who writes this column as a regular feature of the Law Journal, is associated with the firm of Marshall, Bratter, Greene, Allison & Tucker.

Panama Canal Treaty: Environmental Issues

Measuring the pervasiveness of environmental law today requires an extensive ruler. The measure frequently extends into most local general practices and many specialized regional or national practices; this column has focused principally on these areas. Equally significant, however, is the growing reach of environmental law into international commercial transactions and ultimately even the core of our international public law. Occasionally, this column has examined this reach abroad,[1] and the public debate over President Carter's new Panama Canal Treaties is a critical opportunity to study further the role carved out for environmental law.

The public debate and press analysis over the Panama Canal treaties have not mentioned their environmental aspects. This omission reflects peculiar lacunae in the public perception of how environmental law operates in our international law; perhaps it is accepted as commonplace that environmental safeguards will be required. A brief description of the proposed treaties makes this clear.

Continued on page 5, column 1

Continued from page 1, column 1

Treaties, Agreements

There are two treaties, plus a series of collateral agreements, proposed as the package of Panama Canal treaties. The texts of "Panama Canal Treaty" together with the "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" were released last September.[2]

The latter is an agreement for the security of the canal itself and the guarantee of free passage through the canal; aside from requiring civilian ships to comply with reasonable "health, sanitation and quarantine regulations,"[3] no substantial environmental issues are presented. This treaty does exempt military and governmental non-commercial vessels from inspection regarding those same regulations.

It is primarily the Panama Canal Treaty itself which presents most environmental law issues.

Negotiations of a new Panama Canal Treaty has been underway for a decade. President Johnson initiated them in 1964 following anti-U.S. riots in the Canal Zone area which resulted in twenty-four deaths. The riots reflected resentment against U.S. control over 550 square miles of key Panamanian soil, dividing the country. As the Treaty's co-negotiator Sol. M. Linowitz told the American Legion Convention last August, Panamanians viewed this land as "a colonial enclave . . . of their best land which they otherwise might have had for development."[4]

1903 Treaty

The 1903 Treaty, by which the U.S. finished construction of the Canal, provided that the U.S. would control the area as "if it were the sovereign."[5] It did not have actual ownership. As the U.S. Supreme Court has noted, the Canal Zone has been U.S. controlled territory over which we do not have sovereignity.[6]

Having constructed the Canal in 1914, the U.S. entered into further agreements in 1936 and again in 1955 regarding U.S. control of the Canal Zone.[7] American scientists have undertaken a series of scientific studies in the Canal Zone and the tropical rain forests, and other fauna and flora were allowed to flourish. In certain areas, actual parks and reserves were established.[8] The canal watersheds were fully protected.

The barrier of the Canal Zone, and also of the tropical rain forests of the Darien Gap in Panama, has prevented the northern expansion of foot and mouth disease in livestock. While this disease is held in check in the United States, it is prevalent in South America.

The danger of the spread of the disease across Panama and northward was documented in precedential litigation brought by lawyers at the Center For Law & Social Policy on behalf of environmentalists and cattle ranchers against the U.S. Department of Transportation in connection with U.S. aid to complete the Pan-American Highway system through the Darian Gap. In *Sierra Club v. Coleman*[9] the U.S. District Court ruled twice that an environmental impact analysis was required pursuant to the National Environmental Policy Act [10] before U.S. aid could be provided for the proposed road. In the first of these decisions, Judge Bryant wrote: [11]

Second Defect

"The second major defect in the 'assessment' is a substantive one: the failure of that document to adequately discuss the problems of the transmission of aftosa, or 'foot-and-mouth' disease. While there is in the document a recognition of the probable transmission of aftosa absent the most stringent of control programs and a consequent discussion of the evolving plans for preventing transmission of the disease to North America, there is no discussion whatsoever of the environmental impact upon the United States of a breakdown of such a control program.

Considering that, according to the undisputed record in this case, aftosa is the most serious existing livestock disease, which if it spread into the United States could result in the destruction of up to 25 percent of North American livestock and an economic loss of ten billion dollars as well as the extinction of such endangered species as the American bison, it seems evident that an impact statement which fails to discuss this possibility is fatally deficient.

No matter how well-planned the control program may be, there will always remain at least the possibility that it may not prove successful. Discussion of the consequences of failure is therefore essential, for otherwise the public, and particularly those most interested in such a possibility, will not be alerted to the problem and will not make the informed comments which FHWA is required to consider in its decision-making process."

In light of this prior extraterritorial application of the National Environmental Policy Act (NEPA), plus the fact that the environmental characteristics of Panama were reasonably well known and could not be ignored, the Department of State decided to do an environmental impact statement (EIS) for the new Panama Canal Treaty.

Environmental Components

Before examining the EIS process, the environmental components of the Treaty itself should be studied. They are substantial. For the first time in a non-enviromental treaty, a Joint Commission on the Environment is created. The United States has such joint commissions on border environmental issues with Canada [12] and Mexico. [13] It has a joint committee to oversee the environmental agreement with the USSR. [14]

To extend this pattern of bilateral environmental diplomacy into a political and security contest is a valuable precedent. It is a sound acknowledgement that sensitive environmental issues do exist in Panama and that the unique history of U.S.-Panamanian relations provides ample cause for establishing an especially tailored channel to cope with those issues.

The Joint Commission is structured in Article VI of the Treaty.[15] That Article provides for "protection of the environment" as follows:

"1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

Environmental Law

Commission Established

"2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

"3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out."

While the incorporation in a treaty of the duties to exchange information and consult on environment protection issues is a major step forward, so also the absence of other basic measures reflects certain inadequacies. Any and all procedures on a host of environmental issues are put on a back burner to be dealt with later. These include obvious points within the text of the Treaty itself, as well as factual impacts within Panama which the text never discusses.

The sort of environmental issues raised by the text on its face include the following:

Issues Raised

(1) The Joint Commission and bilateral national agreements focus on protecting the environment of Panama. As the Darian Gap case showed, however, what happens in Panama can affect us in the U.S. and in other nations. Operation of the Canal can also affect the ecology of two oceans. Since these facts are clear, it may be inferred that the scope of protection is broader than just the Panamanian natural resources.

(2) The U.S. will operate the Canal, including taking "measures necessary to ensure sanitation" of the area of canal operation,[16] but it will discontinue and transfer to Panama a set of activities not related to the canal operation as illustrated in an Annex to the Treaty.[17] Since the Annex list is not inclusive, a range of matters are left open to future identification and negotiation; the U.S. in operation of the Canal would continue "meteorological and hydrographic services,"[18] and "protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used for the operation of the Canal and anchorages,"[19] and "industrial sanitation and health services,"[20] and "dredging of the Canal channel, terminal ports and adjacent waters."[21] and "control of banks and stabilizing of the slopes of the Canal,"[22] and "maintenance of public areas . . . such as parks and gardens,"[23] and "purification and supply of water."[24]

(3) On the other hand, Panama will assume responsibility for regulating, among other activities,[25] food and drink production, repair and service of private automobiles, sale of petroleum and lubricants, "health and medical services to individuals,"[26] and quarantine controls "except those measures necessary to ensure the sanitation of the Canal,"[27] and "any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal."[28]

In addition to these issues, the text commits the U.S. and Panama to study the feasibility of a sea-level canal or a third lane of locks.[29] No express undertaking to perform an EISS is made but the Treaty does continue the application of U.S. laws, which includes NEPA, during the transition period.[30] The U.S. does agree not to undertake construction, should a new canal or new lane of locks be built, with "nuclear excavation techniques without the previous consent of the Republic of Panama."[31]

Finally, while the Treaty contemplates U.S. payments to Panama for such services as street cleaning and garbage collection,[32] no provision for water pollution abatement or other natural resource management is provided.

A thirty-month transition is provided to make the transfer of authority contemplated.[33]

There are a host of actual environmental issues which exist and which the transfer of authority would affect. These are not referred to in the text, although they presumably are the sort of matter which the Joint Commission will explore.

Region's Conditions

Such issues arise from the actual conditions in the region; they range from planning for solid waste or crank case oil disposal and water pollution issues other than canal oil spills, to natural resource use. The tropical rain forests (outside of the Canal Zone) have been exploited without the benefit of a management system;[34] they are reported to be largely depleted as a result.

Once authority is transferred, it is predictable that unauthorized and/or unregulated timbering will continue into the Zone forests. Not only will flora and fauna be disrupted but also the watersheds for the Canal and lake area may be impaired with concommittant soil erosion and siltation. The parks and scientific reserves may not be maintained or expanded.

On the other side of the coin, there is no express restriction on the Joint Commission to examine just Canal issues. The Darian Gap highway or a new copper mine planned in the Sierra Colorado which enjoys U.S.-Canadian assistance, both could pose environmental issues for the Commission. The Treaty, thus, has definite implementation and staffing implications; unless well implemented, environmental degradation is likely.

Few of these environmental issues were studied by the State Department in its draft EIS issued Aug. 30, 1977.[35] The EIS is a scant forty-three-pages long, with a kitchen sink of appendices of some 140 more pages, charts and maps. It contains almost no analysis, and hardly meets the criteria which has been standard under NEPA since the early landmark rulings such as *Calvert Cliffs.*[36]

The public comment period was foreshortened to expedite the process of getting the Treaties to Congress. Despite the brief period, twelve of the nation's major environmental groups commented on the draft EIS through their counsel at The Center for L[illegible]w & Social Policy, in Washingto[illegible] D.C.[37] The Nature Conservancy fi[illegible] comments also,[38] and joined in [illegible]ose of the Center.

No final EIS has been issued. Much remains to be d[illegible] if the State Department is t[illegible] issue [illegible] final EIS which adequatel[illegible] the environmental issues. A full and complete EIS would doubtless serve the initial needs of the Treaty's Joint Commission by, at a minimum, identifying the environmental issues which merit priority attention.

The President and State Department have not publicly commented on how these environmental treaty issues will be resolved. They have agreed to substantial and public development loans for Panana.[39] The silence on the environmental aspects, in light of their pervasive scope, raises questions about the seriousness of the planned implementation.

Ratification Backed

On balance, the environmental issues are probably best served by ratification of the Treaty. The draft EIS and the environmental groups both reach that conclusion. The region's environment will be disrupted if rioting and unrest follow a failure to ratify; the environment will be disrupted if authority is given up without U.S. assistance to assure environmentally sound development. Only if the commitment to act, which accompanies the act of ratification, is implemented will the environment be protected.

That is the promise of the Treaties. New international law is being pioneered here. It is imaginative as well as fraught with difficulties. The Treaty commitment to protect the natural environment of Panama should be put in the spotlight and explained. The environmental law aspects of the Treaties are a factor favoring ratification

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[1] See, e.g. N A Robinson, "International

Commerce and the Requirements of Environmental Protection", N.Y.L.J. p. 1, col. 1 (April 23, 1974).

2. See Bureau of Pub. Affairs, Office of Media Services, Department of State, Selected Documents No. 6 (Ref. Sept. 1977) herein "Treaties".

3. The U.S. and Panama in Article II assume responsibility to maintain the Panama Canal "secure and open to peaceful transit by vessels of all nations on terms of entire equality," subject to their "compliance with applicable rules and regulations" set forth in Article III. Article III provides that the operator of the Canal may promulgate "just, equitable and reasonable" regulations "for safe navigation and efficient, sanitary operation. . . ." Article III(a), the sanitary operation is stressed. Further in Article III(e) exempting all military vessels and non-commercial governmental vessels from "inspection" unless such inspection is needed for "measures strictly necessary to assure safe, sanitary transit and navigation," or unless inspection is needed for "live cargoes, such as cattle or other livestock, that may carry communicable diseases." Annex A, para. 6. The military and other government-owned non-commercial vessels must certify that they have "complied with all applicable health, sanitation and quarantine regulations" whether or not inspection is "strictly" necessary or "livestock" is being transported.

4. Sol M. Linowitz, "Why a New Panama Canal Treaty," Aug. 19, 1977, Denver, Colorado. (Print of speech from Bureau of Public Affairs, Office of Media Services, Department of State).

5. "The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, Nov. 18, 1903."

6. People of State of N.Y. ex rel. Rogers v. Graves, 299 U.S. 401, 57 S. Ct. 269 (1937); see also Wilson v. Shaw, 204 U.S. 24 (1907) upholding expenditures of U.S. funds to construct the canal initially.

7. Hay-Pauncefote Treaty, 22 February 1902, 32 Stat. 1903.

8. See, e.g. the authority and activities under 20 U.S.C. 79a.

9. Sierra Club v. Coleman, F.Supp. 6 ELR 20-051 (D.D.C. Oct. 17, 1975); see also 6 ELR 20798 (D.D C. Sept. 23, 1976).

10. 42 U.S.C. 4321, et seq.

11. Supra note 9.

12. See I.J.C., authority and treaty, 16 U.S.C. 1456.

13. See I.B.W.C., authority and treaty, 16 U.S.C. 460.

14. See Agreement Between U.S. and USSR on Environment, May 23, 1972, ELI STATUTES at 40327

15. Treaties at 4-5.

16. Art. III, 2, a, Treaties at 2.

17. Art. III, 4, at Treaties, p. 3; Annex is at Treaties 11-13.

18. Annex, para. 3, h, Treaties at 12.

19. Id. at para. 3, n.

20. Id. at para. 3, q.

21. Id. at para. 3, s.

22. Id. at para. 3, t.

23. Id. at para. 3, v.

24. Id. at para. 3, x.

25. Annex, para. 4, a.

26. Id., at para. 4, a (xii).

27. Id., at para. 4, a (xv).

28. Id., at para. 4, a (xvii).

29. Article XII. Treaties at 9-10.

30. Article XI, 7, Treaties at 9.

31. Article XII, 5, Treaties at 10.

32. Article III, 5, Treaties at 3.

33. Article XI, Treaties at 8-9.

34. For a good management system see L. Hamilton," "Management of Tropical Rain Forests" available from Sierra Club EARTHCARE CENTER, 800 Second Avenue, N.Y., N.Y. 10017.

35. "Draft Environmental Impact Statement For The New Panama Canal Treaty" (August 1977, Department of State, Contact Wm. Mansfield, III).

36. Calvert Cliff's Coord. Comm. v. U.S. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir., 1971).

37. Comments filed by letter dated Sept. 28, 1977.

38. Comments filed by letter dated Sept. 7, 1977.

39. Testimony of Secretary of State Cyrus Vance before the Senate Committee on Foreign Relations, Sept. 26, 1977, at pp. 2-3:

"We have agreed, outside the treaty, to certain arrangements which will assist the general economic development of Panama and enhance its stability. We have formally told the Panama Government that we are prepared to develop a program of loans, loan guarantees, and credits to Panama — including up to $200 million in Export-Import Bank credits over a Five-year period; up to $75 million in AID [Agency for International Development] housing investment guarantees over the same period; and a loan guarantee of up to $20 million from the Overseas Private Investment Corporation.

"All these loans require repayment. There are no grants. In addition, over a ten-year period, Panama will receive up to $50 million in foreign military sales repayment guarantees, so that its armed forces can be better prepared to help defend the canal. Most of this assistance will be used to purchase American equipment. These programs would be subject to all relevant U.S. legal requirements and program criteria."

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Environmental Law

By Nicholas A. Robinson

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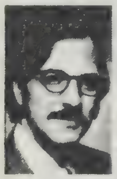
Environmental Safeguards In Canal Treaty Clarified



On March 16, 1978, the Senate gave its consent to and ratified the first of two treaties on the Panama Canal.[1] By a vote of just one more than the constitutional two-thirds majority needed, the Senate accepted the "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal."[2] Although this Neutrality Treaty is the lesser of the two covenants in terms of environmental law,[3] its ratification foresages a similar acceptance by late April of the "Panama Canal Treaty" itself. Since this column last October examined the new environmental law embodied in the Treaties,[4] the State Department specifically has addressed their importance for environmental protection. As the Panama Canal Treaty itself comes up for a vote, it is useful to consider the precedent in international environmental regulation which is being made and the alternative implementation strategies possible.

Beyond the issues of security, the Panama Canal Treaty devotes more attention to environmental law provisions than any other subject. By the

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provisions of the Treaty, the U.S. will supervise operation of the Canal and train the Panamanians to take over canal operations between now and the end of this century. Article VI of the Canal Treaty commits both Panama and the U.S. to protect the environment and authorizes a Joint Commission to advise on how the two nations should *avoid*, or alternatively, "should this not be possible," to mitigate any adverse impacts arising from actions pursuant to the Treaty.[5]

Despite the prominence of environmental provisions in the Treaty, few have examined them closely. For instance, when Ambassador-at-Large Ellsworth Bunker explained the "key elements" of the Treaty to the Des Moines Chamber of Commerce and the Des Moines Rotary Club last Jan. 26, 1978, he said nothing about the environmental aspects.[6] In contrast, however, on Jan. 6, 1978, Acting Secretary of State Warren Christopher issued a "Statement on the Panama Canal Treaties and Environmental Protection."[7]

Joint Commission

Christopher noted that "Panama's unique geographic location makes it important to the environment of many nations." [8] He noted that both the United States[9] and Panama[10] were committed to making the Joint Commission on the Environment work effectively.

He also emphasized the important role which the National Environmental Policy Act (NEPA)[11] had played in guiding the environmental aspects of the Treaties. "We recognized the importance of the NEPA procedures in formulating environmentally sound policies as well as the value of public participation in the NEPA review process."[12]

The Christopher statement also made a record of how the State Department complied with the NEPA review process. In doing so, he made it possible for one of the nation's largest environmental groups, the Sierra Club, to endorse ratification last Jan. 15, 1978,[13] and he built an administrative record which may have helped discourage a suggested suit by "right-wing" anti-Treaty political interests seeking a Federal Court injunction to delay Congressional action until a more thorough environmental impact statement was prepared under NEPA.[14]

Beyond these points of the Treaty's "legislative history" or *traveaux preparatoires*, the part of the Christopher statement which is of interest to environmental lawyers is that section which addressed how the Joint Commission will be structured. Christopher stated that:[15]

"It is our intention that the Joint Environmental Commission shall have the staff and financial support it needs to be effective. We will propose that the American members of this Commission include leading science and environmental figures as well as others from the private and public sector. In addition, reports on the state of the environment in the Canal Zone and the surrounding watershed will be assembled and indexed. Federal agencies with expertise relevant to the Canal Zone issues will assist in developing information for the Joint Commission on matters which require priority attention. And, recognizing the importance of baseline data showing the current state of Canal Zone ecosystems, including air and water quality, marine life in the adjacent oceans, and flora and fauna, the U.S. will cooperate with the Panamanian Government in assembling that data expeditiously."

It is very likely that this structure will require new legislation to be implemented. Even if the State Department were to assert that it had the authority to set up the U.S. side of the Commission by administrative action, such as executive order, it is unlikely that the House of Representatives, which has not yet had a prominent role to play with respect to the Treaties, will do nothing when it could take a major part in defining U.S. procedures under the Treaty and since, in fact, it does have the major responsibility for structuring how to meet the fiscal needs of Treaty implementation.

There are three alternative models for the Joint Commission. There is, first, the bilateral cooperation agreement format such as the environmental agreement between the U.S. and U.S.S.R.[16] This is an exchange of information and experts and occasional joint projects to study problems of mutual interest. The second is the pattern of the International Boundary Commission between the United States and Mexico,[17] which focuses on environmental issues of boundary water volume and quality for the Rio Grande and Colorado Rivers. The third is the International Joint Commission between the United States and Canada.[18]

The latter two commissions were designed before environmental concerns became prominent. Both have taken on environmental issues and procedures in recent years.[19] They have powers to gather information, including subpoena powers, exchange information between the two sides, maintain field offices, place matters on the common agenda and require their examination. The referral of a matter to the U.S.-Canadian Joint Commission has proven more significant in prompting amelioration of environmental issues than has the IJC's regulatory power to license "uses, diversions, or obstructions" affecting the flow or bend of boundary waters.[20]

Experts on staff or secured from other agencies assist the Commissions and expert advisory committees undertake oversight and follow-up responsibilities. In the U.S.-Mexico context, its decisions become binding on the respective governments unless an objection is lodged within one month of the decision.

Overseer

At present, the U.S.-Panama Joint Commission is framed as a body to oversee and guide the two nations' commitment to "protection and conservation of the environment." The Commission "shall" review treaty implementation and "shall recommend" ways to avoid or mitigate environmental harm. Both parties "shall" furnish complete information on actions which *both* agree may have a significant affect on the environment. The information must be given far enough in advance of the proposed action to permit study and let the responsible acting agencies consider any Commission responsibilities.

For the Commission to work well, the "shall" mandates need to be structured by rules and regulations on each side. The State Department's commitment in the Christopher statement to include public members from scientific and environmental communities will build in some degree of expertise and integrity.

However, the *veto* potential whereby either nation might claim that a proposed action would not adversely affect the environment and thus avoid the duty to submit information, must be circumscribed by mutually agreed upon standards.

The NEPA tests as to "significance"[21] need to be grafted onto this clause, and since NEPA inspired this Treaty language, such a gloss is entirely appropriate. NEPA-like procedures need to be framed.

Canal Commission

Within Panama, ways should be developed to refer matters to local health and conservation officers. Provisions for training and basic data collection programs on an ongoing basis should be designed. Procedures for individuals to bring matters to the Commission's attention should be structured.

Most important in this regard will be the relationship of the Environmental Commission to the Panama Canal Commission, which has operational authority for the Canal. If environmental protection is to be taken seriously, this relationship must be defined at the outset with clarity. Congress has more experience in framing such a relationship than does the State Department, although guidance could be sought from the Council on Environmental Quality and the Departments of the Interior and Environmental Protection Agency.

Priorities

Priorities for the Commission's initial environmental agenda, such as a joint program to contain "hoof and mouth" disease (aftosa) south of the Darien peninsula, should be fixed. The Commission should begin operations with several clear and immediate charges. Forestry management to avoid soil erosion and protect flora and fauna, especially the endangered species in the Canal Zone, is another clear priority.

Some of these priorities can be inferred from other existing bilateral treaties between the U.S. and Panama, or from the multilateral treaties to which both states are parties. Cooperation on aftosa is subject to a 1972 treaty, for instance.[22]

One manifest priority is the feasibility study on any expansion of the Canal by a third set of locks or sea-level canal. The State Department has promised a full environmental impact statement on the study,[23] and since the Treaty calls for the study both nations have necessarily put this issue before the Commission.

Analogy and Reason

What ratification of the Panama Canal Treaty brings in terms of new environmental law is an undertaking of two non-neighboring states to act in concert to protect the regional environment.

In 1912, a Committee of the House of Representatives is reported to have observed that "The Panama Canal is unique in all respects and at every stage presents novel problems . . . legislation to operate and govern [the Canal], with its adjuncts and incidents, must in the absence of precedent rely on basic principles, with analogy and reason as the only guide."[24]

It will be up to the Congress to take leadership in fashioning the unique administrative procedures for environmental protection under the Treaties. Analogies to NEPA and the boundary commissions exist, and environmental protection guides.

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1. Adam Clymer, "Senate, 68-32, Approves First Of 2 Panama Pacts: Carter Hails 'Courage'", New York Times, p. 1, col. 4 (March 17, 1978).

2. Texts of Treaties Relating to the Panama Canal, at 13 (Department of State, Selected Documents No 6, Sept. 1977)

3. All vessels must submit to safeguards for sanitary transit and applicable health, sanitation and guarantive provisions. Article III(a) and (e) and Annex A, para. 6, supra note 2 at 14-15.

4. See N.A. Robinson, "Panama Canal Treaty: Environmental Issues", 178 N.Y.L.J. p. 1, col. 1 (Oct. 25, 1977).

5. Supra note 2 at 4-5.

6. "Panama Canal Treaties: A Negotiator's Perspective," Dept. of State, Speech, Jan. 26, 1978, Bureau of Public Affairs, Office of Public Communication

7. Christopher text distributed with cover letters dated Jan. 12, 1978, by William H. Mansfield III, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Affairs, Department of State.

8. Christopher text, para. 1; he continued in para. 2 to explain the development of Article VI as follows: "During the negotiation of the Panama Canal treaties, the Department of State and other agencies of the United States Government recognized the serious environmental implications of the treaties key provisions. The United States noted that the transfer of large tracts of essentially undeveloped territory, comprising much of the Canal Zone, to a country energetically engaged in economic development could seriously impact on the ecology of the area. Accordingly, the negotiators included Article VI as an integral part of the Panama Canal Treaty. In that article, the United States and Panama commit themselves to implement the treaty 'in a manner consistent with the protection of the natural environment.' The article also provides for the establishment of a Joint Commission on the Environment, which is to recommend environmental protection measures to the two governments."

9. Ibid., Para. 3: "Such is the framework for environmental action established by the written instrument. However, it will only be through the joint effort of the two governments, following ratification of the treaties, that the commitments made in the treaties will come into effect. For the United States, this will entail provision of relevant information about the Canal Zone and its resources, technical assistance, as well as resources needed to carry out effective programs of environmental protection. To that end, the U.S. Agency for International Development is developing a project, in cooperation with the Panamanian Government, to provide it with the capability to carry out sound land and water management and reforestation programs."

10. Ibid., Para. 4: "On the Panamanian side, our diplomatic mission in Panama has noted that the Panamanian Government is taking environmental concerns seriously and has attached a high priority to the problem of protecting the Canal watershed. As evidence of this, the mission reports that both the Panamanian Minister of Planning and the Vice Minister of Agriculture have recently pressed for early implementation of the AID Watershed Management Project. Moreover, in addition to the provisions contained in the Panama Canal Treaty, there is also a basis in international law for U.S. and Panamanian cooperation on environmental matters since both countries are parties to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil and the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which established Barro Colorado Island as a Nature Monument."

11. 42 U.S.C. 4321.

12 Supra note 7 at para. 6.

13. See Sierra Club National News Report (Jan., 1978).

14. See "Failure to Meet EPA Law May Block Canal Pacts", Spotlight, p. 3, col. 1 (Jan. 9, 1978)

15. Supra note 7, para. 5.

16. Agreement of Cooperation In The Field of Environmental Protection, 1972.

17. 22 U.S.C. Sec. 277, et seq.

18. Treaty Relating To Boundary Waters and Questions Arising Along the Boundary With Great-Britain, Jan. 11, 1909, 36 Stat. 2448; Exec. Order No. 9972, 13 Fed. Reg. 3573 (1948), under International Organizations Immunity Act, 22 U.S.C. 288 (1945)

19. See P. Smedresman, "The Int'l. Joint Commission (U.S.-Canada) and the Int'l. Boundary and Water Commission (U.S.-Mexico): Potential For Environmental Control Along The Boundaries", 6 N.Y U.J. INT'L. L. & POL. 499 (1973).

20. Id. at 305.

21. Section 102(2)(c) of NEPA, supra note 11.

22. "Agreement confirming the cooperative agreement between the Panamanian Ministry of Agriculture and Livestock and the United States Department of Agriculture for the prevention of foot-and-mouth disease and rinderpest in Panama," Oct. 5, 1972, 23 U.S.T. 3108; TIAS 7482.

23. Christopher noted as follows, supra note 7 at para. 7: "Finally, in addition to Article VI, Article XII of the Panama Canal Treaty addresses the question of expansion of the existing Panama Canal to accommodate a larger volume of traffic. In that article, Panama grants to the United States 'the right to add a third lane of locks to the existing Panama Canal.' With respect to a possible sea-level canal, the article provides for a study of the feasibility of such a canal without making a decision or commitment that a sea-level canal will be built. Any study of the construction of a sea-level canal will seek to be both thorough and objective as it examines both the economic as well as the engineering feasibility of such a project. In addition, the study would fully explore the environmental consequences of a sea-level canal and would address the problems identified in the reports of the National Academy of Sciences. Moreover, an Environmental Impact Statement would be prepared in accordance with the provisions of the National Environmental Policy Act. Finally, I should note here that we do not intend to use nuclear excavation techniques in connection with any effort to enlarge the capacity of the Panama Canal or build a new canal, both for environmental reasons and because of the terms of the nuclear test ban treaty."

24. Martha Jane Shay, "The Panama Canal Zone: In Search of a Juridical Identity", 9 N.Y.U.J. INT'L. L. & POL. 15 at 37 (1976), quoting 38 Op. Att'y Gen. 300 at 306 (1935), qui vide.

Mr. Robinson served on the Legal Advisory Committee to the President's Council on Environmental Quality and is a member of the Committees on Environmental Law of the New York State Bar Association and the Association of the Bar of the City of New York. He edits the International and Comparative Earth Law Journal, A.W. Sijthoff Publishing Co., The Netherlands.

PUBLIC NOTICES

THE ANNUAL REPORT OF SAMUEL & MARA ROSOFF FOUNDATION for the calendar year ended December 31, 1977 is available at its principal office, located at c/o Reuben B. Sperber, 7005 N. W. 17th Court, Margate, Florida 33063 for inspection during regular business hours by any citizen who requests it within 180 days hereof. Principal Manager of the Foundation is SAMUEL ROSOFF.

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Environmental Law

—By Nicholas A. Robinson—

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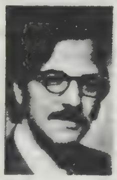
Panama Canal Treaties: Safeguards Stalled



Since the Senate's ratification of The Panama Canal treaties[1] last spring, they have not been much in the news. There was the exchange of ratified texts when President Carter visited Panama. However, there has been almost no report of official action implementing the bilateral agreements. A major and comprehensive element of the treaties is their provision for environmental protection. This column examined the treaties' innovative law-making last October[2] and March.[3] Before the pace of implementation picks up with the end of summer, it will be useful to review what administrative and legal measures now should be forthcoming.

Since the Senate ratification vote was close, and key votes such as that of Senator Howard H. Baker, Jr. were based on an understanding that the opportunity for the United States "to have the quiet use and enjoyment of the Panama Canal for many years to come is greatly enhanced by these treaties,"[4] the role of environmental protection in ensuring such quiet use and enjoyment is critical. Details of the environmental measures were not in the treaties, but were left to joint Panamanian and U.S. formulation after ratification.

Environmental threats to the Canal's operation raise two primary concerns. One is the deforestation of the Canal Zone, with the attendant erosion into the Canal and reservoirs and the further loss of water for use in the Canal. Reports from Canal sources indicate that slash-and-burn farm practices are fast encroaching on the Canal; as much as 80 percent of Gatun Lake watershed and 40 percent of Madden Lake watershed have been deforested since 1952.[5]

Silting has resulted in the loss of water stored in some reservoirs and land slides from erosion have been a

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problem since the Canal construction began.[6] The water shortage in turn is worrisome because Lake Gatun, nearly 50 percent of the Canal's length, must be maintained at a level of 84.6 feet above mean sea level to assure unrestricted use of the Canal. The forests retain water and ease its release as well as preventing sedimentation. Loss of the forest also will eliminate one of the most diverse natural areas in the Americas, denying scientists the flora and fauna they contain.

A second major environmental hazard arises from disease and pests. Because of the battles against epidemics of yellow fever, Chagras fever and other forms of malaria in the nineteenth century,[7] sanitation levels have been high in the Canal Zone. Careful sanitation and quarantine controls prevent diseases from spreading through the passage of ships from all parts of the world through the Canal.

Equally important is the Zone's role as an epidemiological barrier to the migration of disease between South and North America. The health personnel in the Zone constitute what the Gorgas Memorial Institute of Tropical and Preventative Medicine terms "an epidemiological early disease warning system" alerting states from Venezuala and Columbia to Mexico and the United States of dangers. Yellow fever, Venezualan equine encephalitis, vesicular stomatitis of cattle, hoof-and-mouth disease, malaria, leishmaniasis and even hybrid "killer" bees are a few of the possible diseases and pests which could migrate through the region if adequate preventative measures are not taken.[8]

Since the Panamanian governmental agencies at present lack the staff, both in numbers and in trained personnel, and the funding to match the needs for forest watershed management and sanitation in the Canal Zone, considerable reliance on the existing U.S. services will be necessary. The U.S. Agency For International Development has a $10 million Watershed Management project for 1978 to develop the Panamanian agencies' capacity to manage and protect the forests of the region.[9] No comparable measures have been launched for the health and sanitation fields.[10]

The principal legal institution created by the treaties to cope with these two environmental protection matters, and also the host of all other conservation and environmental issues, is the Joint Commission on the Environment.[11]

Joint Commission Mandate

This Commission is mandated to "periodically review the implementation" of the treaties and to "recommend as appropriate to the two governments" ways to avoid or mitigate adverse environmental impacts from their actions "pursuant to the treaty."[12] Beyond its right to recommend, the Commission has the right to receive "complete information on any action taken in accorddance with this treaty" when both nations judge that such action may have a "significant effect on the environment."[13]

The mutual undertakings by which both the U.S. and Panama "commit themselves to implement this treaty in a manner consistent with the protection of the natural environment of The Republic of Panama"[14] are important contributions to international law. They reflect the duty framed in Principle 22 of the United Nations Stockholm Declaration on the Human Environment that all nations shall cooperate to assure environmental protection. They also go far toward implementing the state duty expressed in Principle 21 of The Stockholm Declaration that each nation must prevent actions within its jurisdiction or control from causing environmental harm to areas outside its control.[15]

In U.S. municipal law, the Joint Environment Commission is a concrete response to the obligations of the National Environmental Policy Act (NEPA) to cooperate for environmental protection in the international context.[16] NEPA also requires the appropriate U.S. agencies to undertake a full environmental impact analysis of any of its actions, under the treaties or otherwise, which have a significant effect on the quality of the human environment.[17]

Thus, creation of the Joint Environmental Commission responds to both international law and national law obligations. However, the real test is implementation, not treaty language. It is the implementation which will determine whether or not the watershed protection and sanitation needs will be met.

Key Functions

The Joint Environment Commission has two key functions. Most important is its role in guiding and structuring the binational commitment to implement the treaty consistent with protection of the natural environment. Just as the treaty touches all aspects of life in the Canal Zone, so this commission role is extraordinarily pervasive. It is like that of the Council on Environmental Quality.[18] The second function is to advise on the environmental aspects of specific implementation steps. To do so, it probably should fashion its own environmental impact assessment process.

Since what happens in Panama can affect neighboring states, the Commission must consider ways to protect them. A system of consultation among environmental officials in these states will have to be set up.[19]

U.S. participation in the Joint Environment Commission has several structural alternatives. It could be organized along the lines of the U.S.-Canadian International Joint Commission or the International Boundary and Water Commission between the U.S. and Mexico.[20] The U.S. side of these agreements has its own environmental procedures under

NEPA, as well as its treaty mandates. The Mexican Commission is structured by statute[21] but was created by treaties.[22] The Canadian Commission was structured by the 1909 U.S.-United Kingdom Boundary Waters Treaty,[23] and is implemented by Executive Order. The State Department added the Joint Environmental Commission to the draft Panama Canal treaty late in the negotiations. This organizational question must now be resolved.

The only public positions advanced about the Joint Commission on the Environment are those of Acting Secretary of State Warren Christopher, released Jan. 6, 1978,[24] and the few comments in the Final Environmental Impact Statement.[25] Christopher pledged that the Commission would have "the staff and financial support which it needs to be effective." The State Department proposed to include scientific and environmental leaders among the U.S. members of the Commission. To further the Commission's work, Christopher stated that "reports on the state of watershed will be assembled and indexed" and the expertize of all Federal agencies would be utilized.[26]

Before Christopher's statement, the FEIS had explained the Joint Commission on the Environment. It observed that "the detailed responsibilities, staffing and operating procedures of the Commission will have to be worked out within the U.S. Government and with the Panamanians. . . . Its responsibilities will involve monitoring, studying and making recommendations to the two Governments on a broad range of environmental issues . . . The Commission should be supported by a professional staff and be located at the Canal Commission's Headquarters."[27]

Substantive Agenda

Beyond this preliminary organizational thinking, there looms a long substantive agenda of items for the Commission: (1) It must consider how to advise Panama as she develops her next five-year Development Plan; the current plan proposes a number of roads through the Darien forest, all with scant regard for the environmental consequences. (2) The rare and endangered species in the forests of the Canal Zone must be protected. (3) The environmental components of the "feasibility" study for any sea-level canal, required by the treaty,[28] must be structured. (4) The laws of Panama, in many respects compatable with existing U.S. environmental laws of the Canal Zone, need expansion to cover those further environmental issues not yet addressed legislatively. (5) Sanitation and health procedures must be developed for Panamanian administration.

Even after the Commission members are appointed, and a staff is in place, it is unlikely that the Commission and staff alone can serve adequately . The Canadian and Mexican Commissions regularly use the services of other national agencies from each respective set of countries. Procedures for doing so will be needed for this Panama-U.S. venture as well.[29]

Finally, if the Joint Commission on the Environment functions professionally and well, it will gain the confidence of those throughout the region who depend on the Panamanian environment. New functions then may be added, as was the case with the Canadian and Mexican Commissions. A system for peaceful settlement of environmental disputes should be considered. Panama and the U.S. anticipate the need for new mechanisms between themselves in the treaty.[30] Since Canal-related actions can easily affect the environment of neighboring states as well, a broader dispute settling system, including fact-finding procedures, would be prudent.

When the Panama Canal was conceived in the minds of French and American leaders, it was to be a global resource. It has been administered neutrally, as a trust. Panama now assumes the responsibility to continue this trust, and knowingly has assumed the newer environmental protection measures which are increasingly a part of the responsibility of the Canal operator. In the past, joint commissions have been used to resolve Canal-related matters.[31] Three other Commissions (housing, ports and railroad, and military) are created by the treaty along with a Canal Commission to operate the Canal. Since environmental protection issues will be of concern to each of these other commissions, it is critical that the Joint Commission on the Environment be created contemporaneously or even before the others.

Regretably, there is no evidence that the State Department's implementation group for the Panama Canal treaty has moved to structure the U.S. side of the Joint Commission or to reach agreement with Panama on how to proceed. Every effort should be made to proceed with Panama expeditiously during what has been termed the "honeymoon mood" in Panamanian-U.S. relations following the treaty-making.[32] If the State Department does not act affirmatively this fall, Congress should enact the laws necessary to implement the U.S. involvement in the Joint Environment Commission.

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(1) The texts of the treaties appear in Dep't of State Selected Documents No. 6C (December, 1977).

(2) N.A. Robinson, "Panama Canal Treaty: Environmental Issues" NYLJ, p.1, col. 1 (Oct. 25, 1977).

(3) N.A. Robinson, "Environmental Safeguards in Panama Canal Treaty Clarified," NYLJ p.1, col. 1 (March 28 , 1978).

(4) Adam Clymer, "Senate, 68-32, Approves First of Two Panama Pacts; Carter Hails 'Courage.'" NY Times P. A1, col. 6, at p. A12 (March 17, 1978).

(5) Dep't. of State, Final Environmental Impact Statement for the New Panana Canal Treaties (FEIS), December (1977), at p P-29 (letter of Scientific Committee Chairman of Panama Audubon Society.); see also FEIS p. P-46.

(6) David McCullough, The Path Between the Seas at 165-9, 560-564, 613 (1977).

(7) J.B. Bishop, The Panama Gateway (1914) at pp. 249-57; McCullough, Op. cit. supra note 6 at pp. 137-146, 405-426, 451-4.

(8) FEIS p. P-31 to P-32 (letter of President of Gorgas Memorial Institute).

(9) The principal Panamanian agency is the Direccion Nacional de Recursos Naturales Renovables (RENARE) in the Ministry of Agricultural Development. See FEIS Tab N and AID Initial Environmental Examination (March 20, 1978).

(10) The U.S. Canal Zone Government's Health Bureau has a staff of 1,747 and a $21 million budget. The Panamanian governmental agency for Water and Sewage, IDAAN, is reported to be over-extended. Panamanian civic groups report that "In view of the fact that the Government of Panama places less importance on activities of a preventative nature, particularly if the activities are not without some cost, guarantees should be made that these essential public health activities continue." FEIS at P-40.

(11) Created by Article VI of The Panama Canal Treaty, supra note 1.

(12) Id, Art. VI, Sec. 2.

(13) Id, Art. VI, Sec. 3.

(14) Id, Art. VI, Sec. 1.

(15) The Stockholm Declaration is set forth with annotation in L. Sohn, "Stockholm Declaration on the Human Environment," 14 Harvard Int'l Rev. (1973).

(16) Section 102(2) (F), 42 USE 4332 (2) (F).

(17) Ibid, Section 102(2) (C).

(18) The CEQ is structured under NEPA.

(19) This obligation arises out of Principle 21 of the Stockholm Declaration, supra note 15, and for the U.S. side out of Section 102(2) (F) of NEPA, supra note 16.

(20) See Smedresman, "The International Joint Commission (United States-Canada) and The International Boundary and Water Commission (United States-Mexico): potential for Environmental Control along the Boundaries." NYUJ Int'l L. and Politics 499 (1973).

(21) 22 USC 277, et. seq.

(22) Smedresman, supra note 20 at 500 and 518.

(23) 36 Stat. 2448; T.S. No. 548.

(24) Discussed in this column last March, supra note 1.

(25) Supra Note 5.

(26) The Christopher statement is reprinted in 63 Sierra Club Bulletin 24-25 (April 1978).

(27) Supra note 5 at p. 18.

(28) Supra note 1, Article XII, Section 1.

(29) A further reason to work with and employ Panamanian agencies is that they, and, until the turn-over of all Canal control in 1999, also certain U.S. agencies are the bodies which actually control the environment. One of the reasons the U.S. was able to assure a high level of sanitation and disease control was that Article XII of the 1903 Hay-Bunau-Varilla Treaty, 33 Stat. 2234, T.S. No. 431, gave the U.S. complete sanitary and quarantine control over the ports of Panama and Colon, as well as throughout the zone. See Bishop, op. cit. supra note 7 at 153, 239 and 250-51.

(30) Supra note 1, Article XIV.

(31) Bishop, op. cit, supra note 7, at 417: Four joint commissions for adjudicating the prices to be paid to private land owners for property needed for Canal construction purposes.

(32) Alan Riding, "What's Doing in Panama," NY Times p. XX9, col. 1, (Aug. 6, 1978).

Mr. Robinson. Thank you very much, Mr. Chairman.

With your permission, I will also not read my statement. You have it before you, and I will highlight a couple of points.

I agree with Dr. Campanella's statement in all respects. I think the difference between Mr. Wright and me are questions of degree rather than kind.

This House of Representatives said back in 1912 that: "The Panama Canal is unique in all respects and at every stage represents novel problems * * * Legislation to operate and govern [the Canal] with its adjuncts and incidents, must in the absence of precedent rely on basic principles, with analogy and reason as the only guide." I think that is what we still have here, several decades later.

We are trying to set up a Joint Commission that can deal with some very real environmental problems. I would add to Dr. Campanella's recital of those problems the fact that as Panama develops and as the Panamanian highway system is continued, you will have a disease vector running from Latin America to North America.

The Gorgas Institute has warned that if quarantine and other methods are not instituted, we could very well have a whole series of diseases that are controlled in Central and North America and not controlled in Latin America, spread north along that sector, including hoof and mouth disease.

The mutual concerns of the Cattlemen's Association and the Sierra Club resulted in those two organizations bringing suit to require environmental review of the final link of the Pan-American highway system to examine that question.

Review of the Sierra Club and bar association's study of the Joint Commission persuades me that we should view the Commission as an opportunity to deal with not only substantial and environmental problems of the canal, but these other binational problems that can affect us intermittently.

The guidelines for setting up a Commission like this have to be a little bit broader and different than United States-Mexican Boundary Commission or United States-Canadian one.

I have outlined in my written statement, on pages 5 and 6, seven principles that I think ought to be incorporated into the legislation.

I think Mr. Murphy's bill, House No. 111, is the preferable place for incorporating these standards. I think there has to be a clear authorization for this Commission, not just a delegation to implement it. I say that because the State Department has been very wishy-washy about what it wants out of this Commission.

I have attached to my testimony the statement that Warren Christopher issued in January 1978 prior to ratification. And if you will glance over that and compare it to his testimony before you, you will see that they are completely different. He never mentions environment once in his testimony before you, and the testimony that the State Department provided through David Popper was similarly noncommittal, very downplaying of the whole concept of this binational cooperation.

I have come to the conclusion, and came to it indeed well before this set of hearings, that the only way this Commission is going to be properly structured is for the House of Representatives to take a strong stand on putting together a solid Commission Structure which would meet the criteria for an effective intergovernmental cooperative body. This is, after all, an advisory body, not a regulatory body.

I would view that there really ought to be a scientist, and the legislation ought to say there should be a scientist, as one of the three members. If this House feels that Senate confirmation should assure the highest quality in the way of expertise for the Presidential appointments and similarly influence and persuade the Panamanians that we treat this as a very serious bi-national venture, then by all means, let us have confirmation requirements. At least that also gives another opportunity for oversight of the operations by Congress.

The testimony that the Smithsonian presented to you, through David Challinor I think is excellent. I commend it to you as a very thoughtful discussion of what the Commission ought to be doing and how it ought to be structured. It clearly needs a staff. It probably should be based in Panama, but the American members are probably going to need some kind of small secretariat here to facilitate their work in North America.

It should also have an opportunity to draw upon other agencies of the Federal Government, the Soil Conservation Service, the Agriculture Department, the Forest Service (wherever is going to end up these days), and the other expert bodies that we have that can, with a little trouble, give very good advice to Panamanians and help them develop their expertise to deal with the problems.

I think the Commission needs adequate funds. The funds probably should come from appropriations to give this body oversight and because we do not really have baseline data. Although Secretary Christopher promised that the State Department would promptly pull together all the baseline data that all the governmental agencies have to facilitate the work of the commission that really has not happened. The baseline data, as the Smithsonian points out, is critical to understanding even the environmental studies aspects for the sea-level canal, which I am sure the Senator will speak about shortly.

So there is a need to start this Commission up, to give it resources to be effective. It ought to begin as soon as possible. The reason I say as soon as possible is that in the treaty itself, in article 6, the treaty language provides that the commission shall periodically review implementation.

Well, how can it periodically—this is a shall, it must do this—how can it periodically review implementation if it does not exist, does not have a staff and has not begun and implementation is going ahead? How can it give advice on ways to avoid environmental problems in advance if again it has not the wherewithal to start?

I would have hoped that the State Department would have tried to start this activity as quickly as possible, rather than letting it sit on the back burner. There has been a binational committee, holding fairly preliminary discussions in Panama on environmental matters, but not with any sense of how should we tool up the Joint Commission.

So I think the ball is really in your park in terms of both immediate American interests of sound operation of the canal, in terms of common interest of wildlife protection and conservation, and in terms of the prevention of further environmental harm; and I would hope that you would strengthen section 106 of H.R. 111 along the lines that I have just outlined.

Thank you very much, Mr. Chairman.

Mr. HUBBARD. Thank you, Mr. Robinson.

Now, I have questions for the panel.

First, if the implementing legislation has language that anticipates an annual appropriation from the Congress for the purposes specified in the joint commission, would that be satisfactory?

Mr. CAMPANELLA. Yes, I think it would. It would assure them of some kind of continuous level of funding, that combined with some formal arrangement, as Mr. Robinson has suggested, or mechanism for tapping into the local expertise, other governmental agencies' expertise, intergovernmental arrangement; but I think it would be definitely appropriate to have a set amount of funding every year.

Mr. HUBBARD. Do you think the purposes of the joint commission ought to be more explicitly set out in the implementing legislation, or more guidance given, or should the breakdown of activities of that commission await negotiations with Panama?

Mr. ROBINSON. Well, you have in the treaty a large agenda of items which that would cover, and I have spelled those out in the articles from the New York Law Journal that I appended to my testimony.

I think the agenda already exists in the body of the treaties for the commission to take up. I think it is sufficient if the legislation simply establishes the commission and gives it the wherewithal to address this agenda.

Mr. WRIGHT. I share the same view. I think we should not get down to trying to anticipate future environmental issues or concerns. It is very difficult to know 10 years down the line what kinds of questions the JCE might have to struggle with.

Mr. HUBBARD. Thank you.

I do have two more questions, but at this point, if you would please favor the subcommittee by taking seats in the back, we will call on you again. We are interrupting you to accommodate Senator Mike Gravel of Alaska who has come for his testimony. The distinguished Democratic Senator Mike Gravel from Alaska is our next witness.

The Senator needs no introduction to this subcommittee because he testified before our full subcommittee last June on the subject of a sea-level canal.

The Senator worked very closely with Chairman Murphy in attempts to construct a framework for a new sea-level canal study.

Senator, I understand you will be discussing the issue of the sea-level canal study with us. This is a matter which has not received attention in these hearings.

Chairman Murphy left about 11:05 and wanted me to indicate to you, Senator Gravel, that he waited 2 hours and 10 minutes to hear you, but an overriding commitment prevented him from remaining 15 more minutes. He was here during that time.

He also indicates that he supports the study you advocate.

We await your testimony, and thank you for being with us.

STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator **Gravel**. Thank you very much, Chairman Hubbard, and other members.

I appreciate the courtesy and the time allotted. I will try to be as brief as possible

Some of the information that I have is redundant. I presented it last year to the committee, as you have noted. I would like it reinserted in the record if possible and would like the committee to take under consideration the possibility of including in your legislation the language on a sea-level canal study that has already passed the Senate twice and, I think, merely because of the time constraint, did not pass the House last year.

I think that with more time there would have been adequate support for it.

The study is a reasonable undertaking. If you would glance at the chart that we have submitted, you will see that today the present canal is 57 percent obsolete, and that that canal will become more obsolete as time goes forward

Our economic interest in the canal is equal to about a third of its total. So, as the most important users, we obviously have a concern that the canal is kept as modern and as relevant as possible to present-day maritime needs. That is not the case.

I think it is a sad reflection upon us that, under our management, no provision was made to offset the rate of obsolescence which was apparent upon close examination. That is not the case with the Suez.

The new information I have to report to you is that, during the course of the intercession, I went to Ismailia and visited the Suez Canal and made an inspection of the canal myself; and if ever I had any doubts in my mind that the project that I am suggesting will be successful, they were removed with an examination of what is going on in Suez.

It is interesting that now the canal is managed by the Egyptians; even the British admit that the Egyptians have given it better management and a better long-term planning thrust.

In 1960, much before anybody else was aware of the phenomenon that would take place in maritime transportation, the sea-level canal authority, through its research, was aware of what would happen and had concluded that the ideal tanker size would be somewhere between 200,000 and 250,000 deadweight tons. And they put in motion a plan to do something about it.

That plan was interrupted by the 1967 war, but now has been resumed; and phase 1 will be completed by next year.

Last year, the revenues of the Suez Canal were $530 million. They anticipate that in the first year, with the new capability that will be to handle tankers of 150,000 deadweight tons, that they will be able to realize an increase in revenue of $400 million—just in 1 year's time. Not only is that obviously an attractive financial situation, but it certainly epitomizes the crying need that exists to make these barriers technically relevant to the new and current maritime needs of the world.

I need not discuss with this committee the problems, becuse you passed legislation last year, and I want to compliment you on it. The competitive problems I refer to are the Siberian Land Bridge, and the difficulties that Soviet maritime interests are giving us throughout the world. I think that they are subsidizing their maritime interests in order to secure hard currency. It is still destructive to our maritime interests, and in my opinion, the only competitive way that we can solve that problem by bringing about a sea-level canal.

I am convinced that one will take place. It is a question of how much time it is going to take to bring it about. How sensitive will we be to this obsolescence factor of 57 percent last year, with a very conservative projection of 90 percent obsolete at the year 2000. That means lost efficiencies that could be realized for the American consumer.

I know that many times we in public office, governmental bodies, are shortsighted. And I know that our concern is now in the transfer of lands, transfer of the present canal. But let me truly underscore for you that that will not solve, one, the Panamanian problem, nor will it solve our economic problem.

What we have to do is set something in motion and begin to arrive at a critical path to decisionmaking. I think that decision will be in the affirmative.

But since the credibility of the study that I have put forward is not sufficient to go forward with construction, I would hope the Committee would see the wisdom of including legislation to create a commission.

It has received only flippant interest from the administration. Panamanians have some interest in it, but here again, they cannot—they have got a flake in their eye, and they cannot see the forest as we have. I would hope this committee would have the foresight to establish a commission as we have outlined.

The details of the study was authored by the chairman of your full committee, working with competent counsel on your side. It was cosponsored and authored by Senator Magnuson and me on my side. If we can just include this language—it truly is not controversial. It is the least controversial item you will address, but I really want to underscore it; I think it will be the most important item that you can put forth in the legislation, because it will set in motion a study that 4 years hence will put us in a "go, no go" position with respect to a sea-level canal.

You read in this morning's paper that the proposal for shipment of oil through a pipeline from Long Beach, Calif., to Midland, Tex., has been withdrawn by the company involved.

The company has decided not to go forward. That is after spending in excess of $50 million. The major impediment to a positive decision is all government—the government of the State of California. I spent 3 days in California 2 years ago trying to address myself to that particular problem, and I am totally convinced it is just bureaucratic machinations and great economic immaturities that have led us to the situation today where a company cannot go forward by using an existing pipeline, which is underutilized, to transport the oil from the west coast of the United States into Midland, Tex., where it can be irrigated into existing oil transportation systems. This is very tragic, because it is the second step in what I consider the continued irrationality of our government policy.

The first step was when the Government would not permit the cost of retrofitting refineries on the west coast for our sour crude. Since nobody can pay for that, the Government would not permit consumers to pay for it.

What happened was refineries were not retrofitted, so therefore you had a 500,000-barrel glut on the west coast, which is shipped presently through the Panama Canal at excess cost of somewhere between $1.50 and $2 per barrel. Since the cost of oil is fixed it means that that $1.50 to $2 is absorbed by the company and, of course in turn by the State of Alaska. That accounts for my interest in the entire issue.

The only way we could alter that inefficiency is to have a sea-level canal where 150,000- to 200,000-ton vessels could pick up oil at Valdez, bring it to the gulf coast of the United States, or east coast of the United States, and move it into our infrastructural transportation systems. That decision has not been made. I hope that this committee will take the first step toward rational energy transportation policy in this regard.

I am chagrined that when the Department of Energy came before you that all they could talk about are swaps and export of oil. I think both are obviously viable economic alternatives; but in the long run, we could use Alaskan oil as the economic underpinning for the creation of this canal, which would be a boon economically to ourselves and to the rest of the world.

There are only two maritime barriers in the world left; one is Suez and the other is Panama. The Egyptians had the foresight to remove their barrier, and I hope we will have similar foresight.

I want to underscore that the method of doing it is going to be somewhat different than what was thought politically viable a decade ago. We will not be the ones to build it, nor the ones to own it, nor will we seek government appropriations to do it.

I think there has been some misunderstanding in that regard. The only way to do this project is to tell the Panamanians that we think it is a sound undertaking and that we would be prepared to guarantee a portion of the financing to bring about its construction. I say a portion. I think we should commit ourselves to guarantee an amount equal to our economic interest, which would be somewhere around a third of what the new canal would cost.

I think we would be saving untold millions of dollars for the American consumer as a result of that.

So, Mr. Chairman, I would hope that you would see fit to include the language. Your counsel is eminently familiar with the specificities of the study, since he and the chairman of your full committee had a total hand in writing it.

What would be created would be a council that would be made up of five members, five Americans, three appointed by the Executive and two appointed by the Congress, one from the House and one from the Senate.

They would make, within 1 year, a determination as to the proper route, which would be a reconfirmation or reexamination of the study that was completed in 1970.

Once that decision had been made, and whatever host country is involved, that host country would be invited to appoint five members to complement five American members, and that commission would go forward to determine the economic efficacy of the project; the environmental costs involved; and the engineering that would be required.

The report would then be made public and reviewed by Panama, the United States, and other maritime nations throughout the world. Then the Panamanians could invite participation in guaranteeing of financing. The project would be owned by the Panamanians, and the revenues would accrue to Panamanians.

But because of the guarantee on the financing side of it, I think we could safeguard our economic interests by a guaranteed formula on what the tariffs and tolls would be during the life of the project.

You have heard the criticism repeatedly, I am sure that when Panamanians get hold of this, they are going to jack up the tolls and are going to be rapacious in their economic practice.

I think one has to rely upon historical perspective and not supposition. The best historical perspective is provided by the supposition that the Egyptians would also be irresponsible with respect to the Suez Canal.

I think it is interesting to note that present Egyptian policy is to lower the tariffs; they have made a policy to go for volume rather than to maximize their returns on a smaller number with a higher toll. They feel that that is in their best long-term economic interests.

I am convinced that management by Panama will be equally judicious and intelligent and that it will be dictated by economic constraints which, of course, is no more than we would ask under the circumstances of our own management.

I thank you, Mr. Chairman, for your attention, and I would be happy to respond to any questions you or your colleagues might have.

[The following was received for the record:]

STATEMENT OF HON. MIKE GRAVEL, A SENATOR FROM THE STATE OF ALASKA

Foreign policy always starts with the question, What United States interests need to be protected? And that is the beginning point for any discussion of the Panama Canal.

There is no question that the United States has an interest in a canal at the Panamanian isthmus. But I have become convinced that our real interests lie less with the present canal than they do with the opportunity to construct a new, sea-level canal.

I therefore joined with Senator Warren Magnuson in offering an amendment to the Fish and Wildlife Improvement Act of 1978 (H.R.2329) to authorize a four-year study to update the report of the Atlantic-Pacific Interoceanic Canal Study Commission. The Senate approved the study on September 26, 1978.

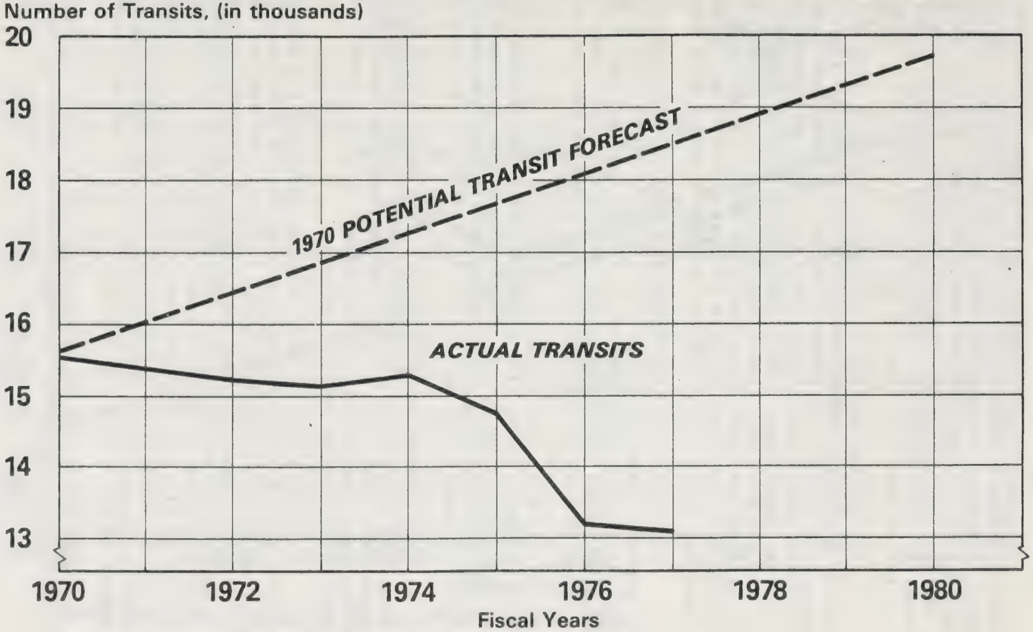
The Canal Study Commission, appointed by President Johnson in 1964 to study the feasibility of constructing a sea-level canal across the Central American isthmus, issued its final report in 1970. At that time it stated that a sea-level canal is wholly feasible from a physical point of view and under reasonable assumptions could be expected to pay for itself within 60 years. The Commission further determined that the defense and foreign policy benefits of a sea-level canal are sufficiently great to warrant writing off a substantial portion of costs for those purposes.

In the eight years since the Commission issued its report it has become increasingly apparent that the present canal is rapidly obsolescing and that a sea-level canal would be not only of military and foreign policy significance, but also of great economic value. To fully appreciate this fact it is helpful to compare the economic projections made by the Commission with actual experience over the intervening years.

The most frequently heard argument against the economic viability of a sea-level canal is that the actual number of ship transits of the present canal has fallen considerably short of the Commission's potential transit forecast. There can be no disputing the facts, although as I shall show momentarily, the interpretation placed upon them has been incorrect. In 1970 there were approximately 15.5 thousand transits of the canal per year. The Commission projected this figure would rise to 18.5 thousand by 1977. But in fact the number of transits declined to just over 13 thousand by 1977. (See Chart 1.)

CHART 1

Panama Canal Transits



SOURCE: Interoceanic Canal Studies - 1970 and Panama Canal Company.

In part this discrepency can be explained as the result of the world-wide recession which hit hard in 1974, and from which we began to emerge in only the last year and a half. But this certainly does not explain the whole picture, because even before the recession the number of transits was running noticeably below the Commission's projection. Transits also went down with the end of the Vietnam war, but this is not the whole story either.

The proper explanation becomes apparent when we look at the tonnage which has moved through the canal in the years since the Commission issued its report. As can be seen from Chart 2, the 1970 potential tonnage forecast is in fact an accurate reflection of actual experience. When the actual tonnage figures are graphed against the straight line projection of the 1970 Study, the crests and valleys are just above and just below the forecast figures. If anything, it appears that the tonnage forecast would have been too modest had it not been for the recession years 1974 to 1976.

It is obvious that where the forecasters miscalculated was on the growth of vessel size. The average vessel size in the world shipping fleet has increased at a rate much greater than expected, with the result that actual tonnage through the canal has met projections while the number of annual transits has actually declined.

This interpretation is further confirmed by comparing actual canal revenues since 1970 with the potential revenue forecast. As can been seen graphically in Chart 3, actual revenues have been running substantially above those which the Commission projected would be required to amortize the cost of a sea-level canal.

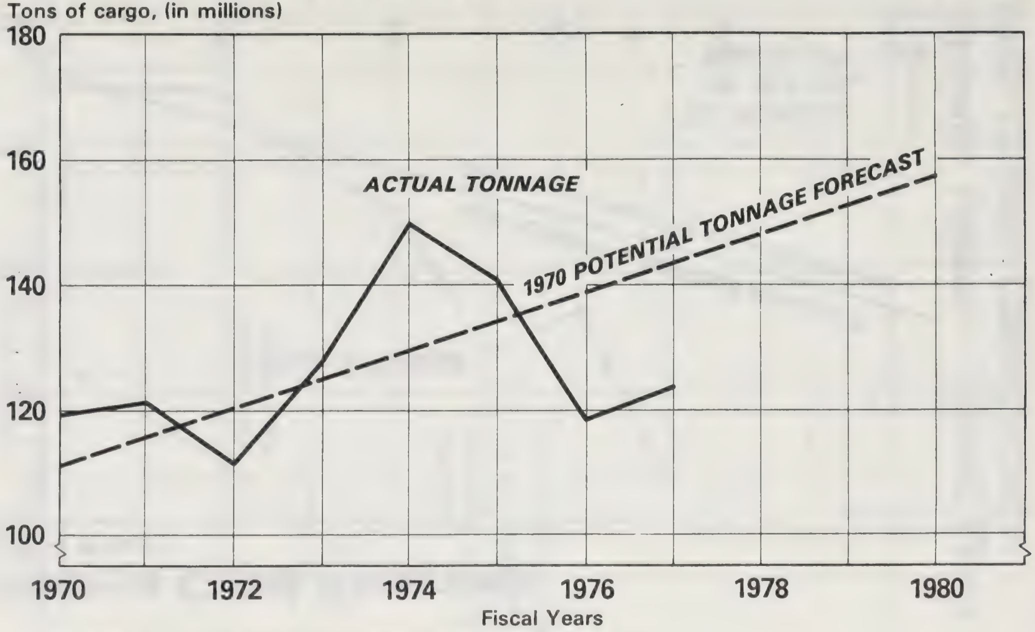
This unexpected growth in ship size revealed by comparing the Commission's economic projections with actual experience points up very starkly that the present Panama Canal is rapidly obsolescing. To see just how rapidly, it is useful to take a look at ship growth rates within recent years.

Chart 4 displays bulk carrier construction growth rates from 1950 to 1975 for those carriers over 60,000 dead weight tons (DWT)--in other words, for those ships too large to use the Panama Canal. It is readily apparent that until 1965 the number of bulk carriers too large for the canal were insignificant. But after that date large bulk carrier construction soared, such that by 1975 almost 20 percent of all bulk carriers were 60,000 DWT or larger, and hence too big to transit the canal. What is even more significant, in carrying capacity these large, new vessels represented fully 43.8 percent of the world tonnage for the bulk carrier fleet.

The situation is even more dramatic when we look at tankers. Chart 5 is a time-graph of average tanker size in the world fleet.

CHART 2

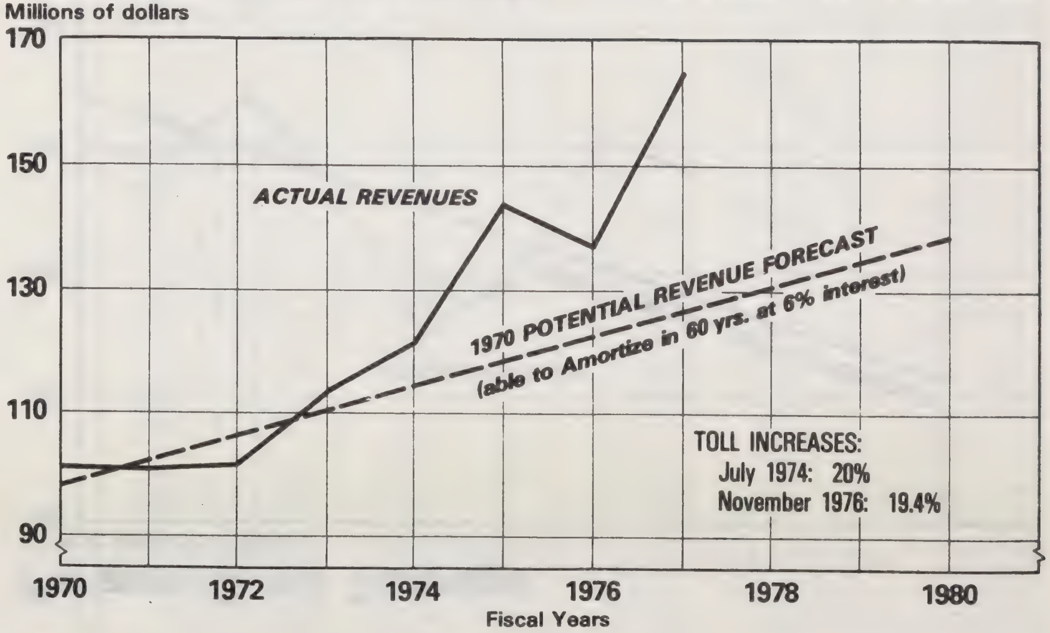
Panama Canal Tonnage



SOURCE: Interoceanic Canal Studies - 1970 and Panama Canal Company.

CHART 3

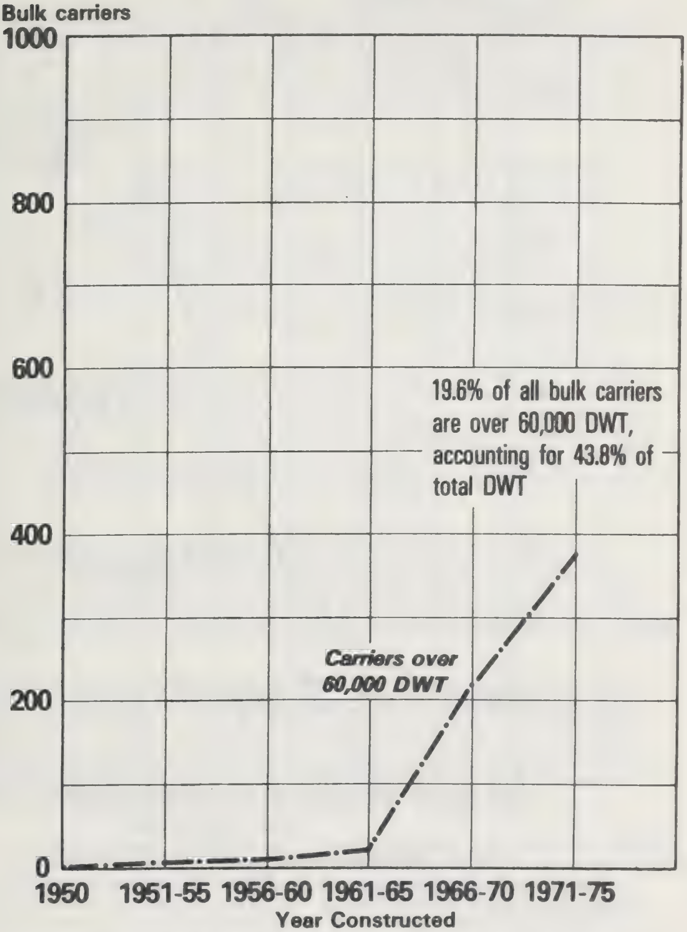
Panama Canal Revenues



Source: Interoceanic Canal Studies - 1970 and Panama Canal Co.

CHART 4

Bulk Carrier Construction Growth Rates— World Fleet

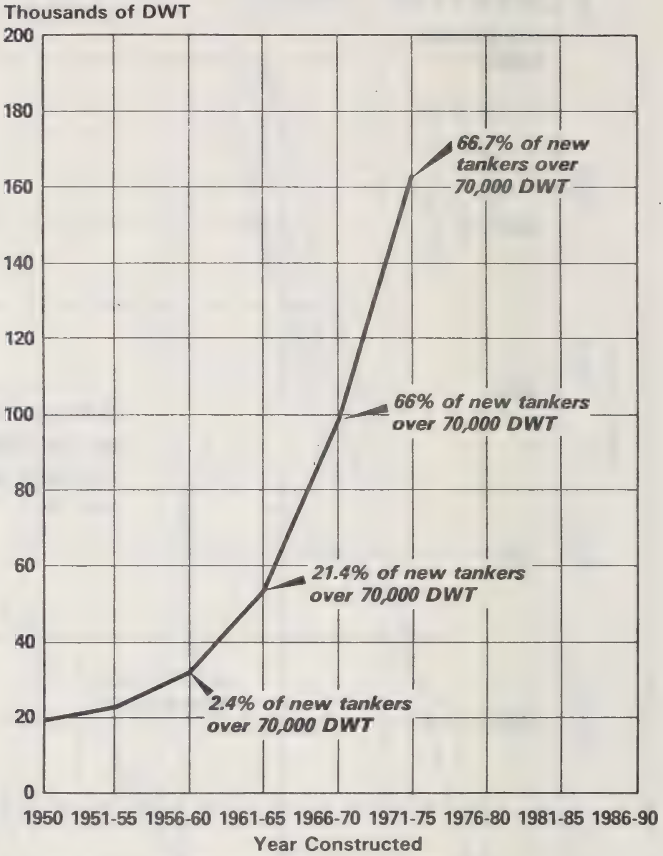


19.6% of all bulk carriers are over 60,000 DWT, accounting for 43.8% of total DWT

Source: *The Bulk Carrier Register,* H. Clarkson & Co., Ltd.

CHART 5

Average Tanker Size— World Fleet



SOURCE: *The Tanker Register,* H. Clarkson and Company, Ltd..

It shows that as recently as 1960 only 2.4 percent of newly built tankers were over 70,000 DWT, and hence too large to use the canal. But by 1975 this figure had jumped to 66.7 percent, a phenomenal growth rate.

Chart 6 tells the same story in a slightly different way. It displays graphically the percent of tonnage of the world tanker fleet over 70,000 DWT. Again we see that the dramatic increase began about 1960, when the total world fleet contained only about 25 tankers too large for the Panama Canal. But by 1975 there were 900 such tankers, representing 37 percent of the total number and a whalloping 76.5 percent of the tonnage.

While Charts 4, 5, and 6 relate exclusively to bulk carriers and tankers--the two types most significant in world trade--Chart 7 shows that these exponential growth rates in fact apply to the world fleet as a whole, not just to two particular kinds of vessel. As can be seen from the graph, in January 1966--a mere 12 years ago--only 10.41 percent of the world fleet tonnage was too large to transit the Panama Canal. But by January 1971 this had increased to 31.77 percent, and by January 1977 to 57.80 percent. In other words, more than half the world's tonnage is already too large for the canal.

Looked at in another way, this means that in the eleven years between 1966 and 1977, the portion of the world fleet tonnage able to use the Panama Canal has dropped from nearly 90 percent to a mere 42.20 percent. If we extrapolate this downward trend at only one-third the actual rate of the past decade, we find that by the year 2001 no more than 7.64 percent of the world fleet tonnage will be able to transit the canal. (See Chart 8.)

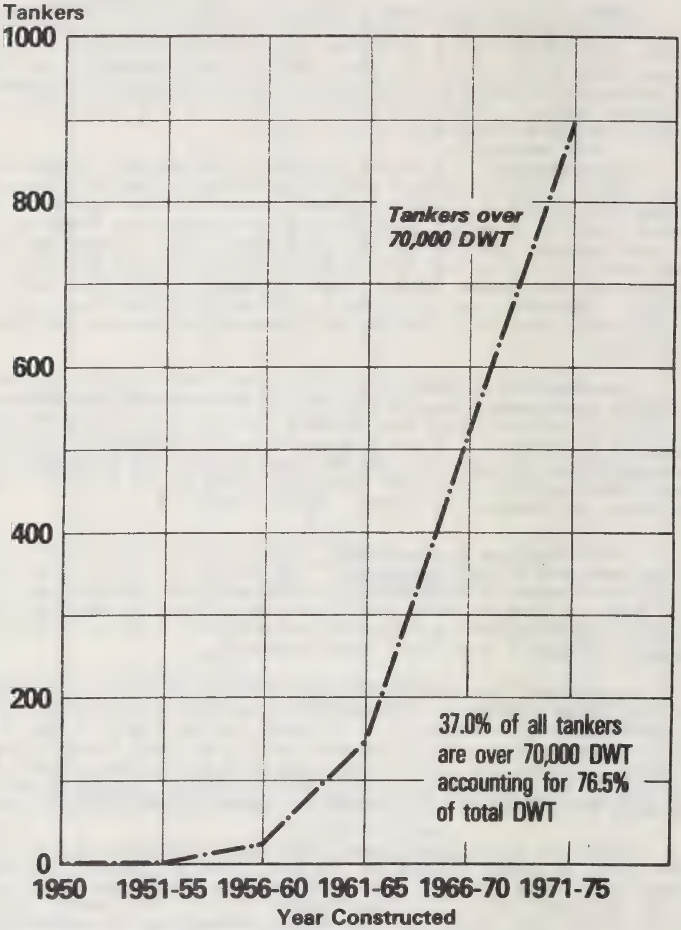
These figures leave no doubt that the Panama Canal is in large measure already obsolete. Its value is rapidly declining as it is overtaken by advances in technology and engineering. It is not hard to imagine what the situation will be in another ten or twenty years, which is probably the shortest time in which we could expect to have a sea-level canal complete.

At present the most striking evidence of the dated character of the Panama Canal is its inability to handle economically the transhipment of Alaskan oil. By next spring Alaska's North Slope will be producing oil at the rate of 1.2 million barrels per day. Within a relatively short time this will be increased to 1.6 million barrels. Even at the lower 1.2 million barrel level, this will produce a West Coast surplus of at least 500,000 barrels per day.

There is every likelihood that these figures, as high as they are, will at least double in the next several years. The probability that large quantities of oil will be recovered from the Alaskan Gulf, National Petroleum Reserve No. 4, and other areas of Alaska, both on and off shore, is very high. According to conservative projections by the U.S. Geological Survey (USGS), recoverable reserves in Alaska may be five times as large as already demonstrated reserves.

CHART 6

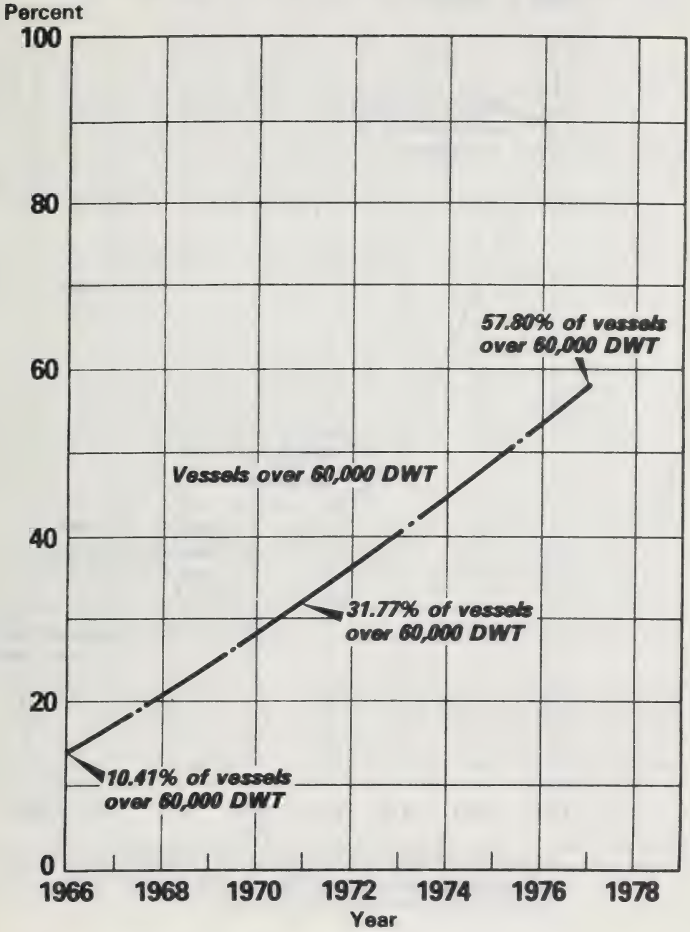
Tanker Construction Growth Rates— World Fleet



Source: *The Tanker Register,* H. Clarkson & Co., Ltd.

CHART 7

Percent of World Fleet Too Large for Panama Canal

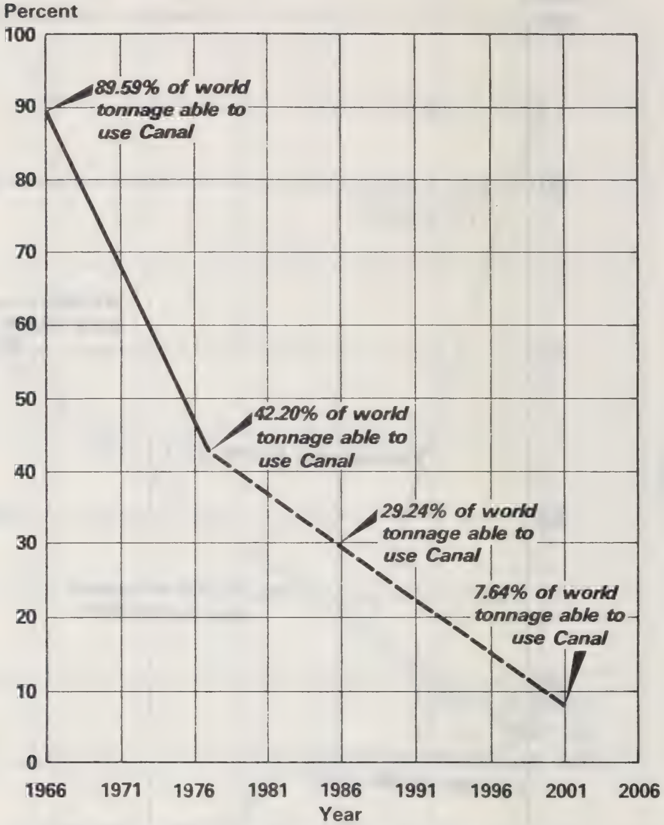


Source: Fearnley & Egers Chartering Co., Ltd.

Declining Percent of World Fleet Able to Use Panama Canal

1966 - 2000*

CHART 8



* 1966-1977 actual figures from Fearnley & Egers Chartering Co., Ltd..
Projected figures assume vessel size growth rates equal to only one third actual rates for the past decade.

I believe it is a conservative estimate that Alaska will be producing an additional two million barrels of oil per day within 2 to 5 years, and yet another two million barrels per day within 5 to 10 years. (See Map No. 1.) Figures of this magnitude are confirmed by an Atlantic Richfield Company estimate that the West Coast oil surplus could be as high as 2.4 million barrels per day in 1990.

As these Alaskan oil reserves are brought to production, a sea-level canal becomes increasingly attractive. It would require 120 million tons of canal traffic per year to move a surplus of 2.4 million barrels per day through the canal. This represents almost exactly one-half of the Commission's entire potential tonnage forecast for 1990. They included in their 239 million tons per year estimate only 41 million tons of petroleum, or about one-third the volume that now appears likely to materialize from Alaska alone.

If this oil and the accompanying gas is to reach U.S. markets where it is needed, it must be transported by tanker to the Gulf of Mexico and the East Coast, or else it must be moved inland by pipeline from the West Coast.

The pipeline alternative has considerable drawbacks. The nation's pipeline infrastructure for the delivery of oil and gas runs south to north, fanning out from the Gulf Coast States to serve the Midwest and Northeast. (See Map No. 2.) The explanation for this pattern is simple. Historically, oil and gas was discovered in the Gulf region and was moved to the nation's population and industrial center.

This infrastructure represents a $7 billion capital investment in the case of oil lines and $12.7 billion for gas lines. There is also an investment of approximately $19 billion in Gulf Coast refining capacity. If it were to become necessary in the next several years to move our energy supplies from west to east, rather than from south to north, much of this infrastructure would have to be replaced at capital costs much higher than the original investment.

For at least the next 2 to 3 years there is no real alternative to using the existing canal for transporting West Coast surplus oil to regions of the country which have a crude oil deficiency. But because of the inefficient lightering operations that are involved, transit charges on this route are sufficiently high that pipeline alternatives become attractive even though new pipeline investment costs would be required.

A number of such projects have been proposed to deliver surplus oil to markets in either the Central or Gulf States. (See Table 1 and Map 3.) The most important of these are as follows:

TABLE 1
TRANSPORTATION ALTERNATIVES
ALASKAN CRUDE WEST COAST SURPLUS

(JANUARY 1977)

PROJECT	Thruput (MB/D)	Projected Start-up	Capital Investment ($ $\overline{M}$)	Transport Costs by Route ($/Bbl) Chicago	Houston
Trans-Guatemala	1200	1/81	934	2.52	2.16
Trans-Mountain	165	1/79	115	2.30	
Northern Tier					
Phase I	600	1/81	1630	2.78	
Phase II	800	1/84	118 (incremental)		
Sohio					
Phase I	500	1/79	472	2.29	2.06
Panama Transshipment		Immediate		2.83	2.46
Cape Horn		Immediate		3.53	3.14

MB/D = Thousands of Barrels per Day
$\overline{M}$ = Millions of Dollars
$/Bbl = Dollars per Barrel

Source: A.D. Little, Inc.

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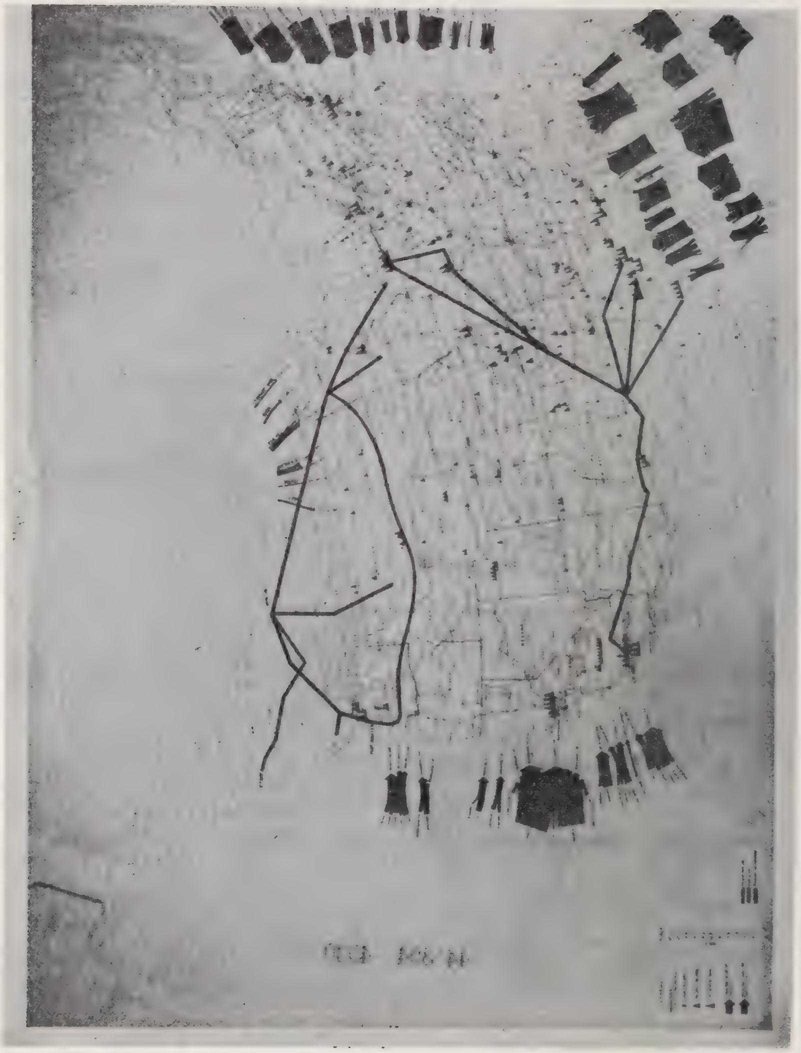


Trans-Mountain Pipeline. This is an existing line which at present carries oil east to west from Edmonton to the Vancouver area. Atlantic Richfield Company (ARCO) proposes a partial reversal of the flow to move 165 thousand barrels per day of Alaskan crude from Cherry Point in Washington to the so-called Northern Tier refineries in Montana, North Dakota, Minnesota, Wisconsin, and upper Michigan. The capacity of this line would satisfy the needs of these refineries. Capital investment costs would be a relatively minimal $115 million and transportation costs into Chicago would be $2.30 per barrel of oil. This project has, however, run into stiff environmental opposition in the State of Washington and may not get the necessary permits. Moreover, federal legislation effectively prohibiting supertankers at Cherry Point was enacted in the fall of 1977.

Northern Tier Pipeline. This proposal calls for the construction of 1570 miles of new pipe at a capital cost of $1.6 billion. It would move 600,000 barrels per day of Alaska crude from the Port Angeles area in Puget Sound to Clearbrook, Minnesota, thus serving the refineries in the Northern Tier States. It would deliver oil to the Chicago area at a cost of $2.78 per barrel. It faces environmental objections in the State of Washington at least equal to those confronting the Trans-Mountain project.

Kitimat Pipeline. This project would involve the construction of 753 miles of pipe from the town of Kitimat in British Columbia to Edmonton, Alberta. It would there interconnect with existing lines to serve the Northern Tier States and the upper Midwest. It would have a capacity of 525,000 barrels per day and would entail an investment of some $969 million. Transportation costs to Chicago would be $2.38 per barrel of oil. At present the sponsors of this project are inactive. It seems unlikely that interest will be revived since the Canadian Cabinet has expressed its opposition.

Sohio Pipeline. Standard Oil Company of Ohio (SOHIO) proposes to convert to oil service existing gas lines running from Midland, Texas to Redlands, California. With the construction of an additional 219 miles of pipe, this would allow Sohio to move Alaskan crude from Long Beach to Texas at a rate of 500,000 barrels per day. This is the most economical of all the proposed pipeline projects, as it would transport the oil to Chicago for $2.29 per barrel and into Houston for only $2.06 per barrel. The Sohio project faces two major hurdles. First, the State of California has been extremely reluctant to issue the necessary permits because of concern that further degradation of air quality in the Los Angeles area might result. Second, both Federal Power Commission and California Public Utilities Commission approval are required for conversion of the existing gas lines to oil service. This approval may not be granted due to new discoveries of gas in the Mexican Yucatan. Mexico could very economically move its gas into Texas and then transport it through the existing system to California.

Trans-Guatemala Pipeline. The Central American Pipeline Company proposes to transport Alaskan crude 227 miles across Guatemala for marine delivery to the Gulf Coast. Investment costs would be $934 million for a 1.2 million barrel per day pipeline. Transportation costs would be $2.52 into the Chicago market, and $2.16 into Houston. The major drawback to this proposal is the absence of interest from the major oil companies, and the possibility that it could be interpreted as involving the export of Alaskan crude, which is currently not permitted.

To summarize, existing pipeline systems in the United States are designed to deliver oil and gas from the Gulf Coast to the Midwest and Northeast, where the nation's energy needs are the greatest. Now that our major source of domestic supply is shifting from the Gulf region to Alaska, we must either build new pipeline infrastructures at large capital costs and potentially signifncant environmental costs, or else we must find an economical marine delivery route that will enable us to bring Alaskan crude into Gulf Coast ports for transport through existing lines. Although a number of new pipelines have been proposed, each has severe political or financial hurdles to overcome. Moreover, even should one or two of these projects be built, their capacities would not be sufficient to handle the surplus supply of Alaskan oil expected on the West Coast ten years from now.

This set of facts, taken in conjunction with the generally positive findings of the Canal Study Commission, appear to make a sea-level canal a very attractive option. To further check this out I compared the oil transportation costs via the combined pipeline-marine routes I have just been discussing with an all marine route through a sea-level canal.

The pipeline costs vary from $2.06 to $2.78 per barrel of crude, and to be competitive transport costs through a sea-level canal would have to fall within this range. Apparently they do.

I have asked Arthur D. Little, Inc., using the same computer model from which the pipeline transport costs were derived, to calculate costs between Valdez and Houston via a sea-level canal. Here is what they found:

- $1.74 per barrel for 165,000 DWT vessels
- $1.35 per barrel for 225,000 DWT vessels
- $1.31 per barrel for 265,000 DWT vessels

To these figures must be added a reasonable toll figure, which I have calculated to be 44¢ per barrel of oil. (This compares with a toll of 27¢ per barrel of oil through the present canal.)

This means that transport costs through a sea-level canal may be preliminarily estimated to fall somewhere whthin a $1.75 to $2.18 range. As can readily be seen (See Chart 9), the low end of this spectrum is 31¢ less, and the high end 60¢ less, than the respective low and high ends of the cost range for combined pipeline-marine routes.

Clearly, if these figures are sustained upon a more thorough analysis, a sea-level canal is a highly competitive alternative for transporting surplus West Coast oil. If we assume an oil surplus of only 500,000 barrels per day (the amount we definitely will have this spring), a sea-level canal would in ten years save the American public $1.3 billion as compared with the existing canal. Over a similar period of time, the savings would be $565 million when the sea-level canal is compared with the most economic of the pipeline routes, the Sohio project. (See Chart 10.)

In addition to the capital investment costs for pipeline and refinery infrastructures which may be offset against the cost of construction of a canal, there are extremely important military and foreign policy values to be realized through a sea-level canal. Under agreements already entered into or soon to be concluded, much of the east coast of the United States will in the near future be dependent upon Algeria, and possibly the Soviet Union, for its natural gas supplies. Although such an arrangement is satisfactory at the present time, the desirability of long-term energy dependency on these two countries is questionable at best. The severe harm which could be done to the economy of the eastern seaboard by a cut-off of these foreign supplies is truly inestimable, but we may be certain it would run into the billions of dollars. A sea-level canal would enable us to meet these domestic energy needs with Alaskan gas, and thus provide us a great deal more foreign policy flexibility.

From a more strictly military point of view, a sea-level canal offers quite significant strategic and logistical advantages over the present canal. It would be almost totally invulnerable to long-term interruption by military attack, whereas the present locks canal can be incapacitated for as long as 2 years with relative ease. This means that the canal's important role in providing logistical support to military operations in the Pacific area would be wholly dependable. To get some sense of what this would be worth in dollar values, we may observe that since its inception in 1904 the U.S. Government has expended $5.31 billion--or approximately six times the net civilian investment in the canal--to defend the canal. These defense expenditures, as important as they are for the present locks canal, could be greatly reduced for a sea-level canal because of its invulnerability.

CHART 9

CRUDE OIL
TRANSPORTATION COSTS

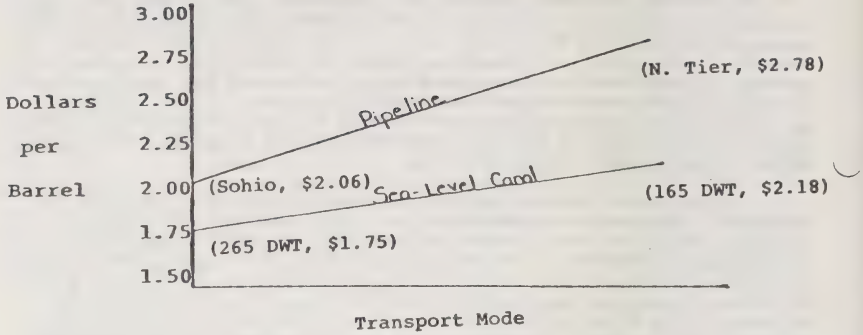


CHART 10

SEA-LEVEL CANAL

SAVINGS

	Cost of Transportation[1]	Total Per Day[2]	Total Per Year	Total For 5 Yrs.
EXISTING CANAL	$2.46	$1,230,000	$448,950,000	$2,244,750,000
SEA-LEVEL CANAL	1.75	875,000	319,375,000	1,596,875,000
	$ .71	$ 355,000	$129,575,000	$ 647,875,000
SOHIO LINE	$2.06	$1,030,000	$375,950,000	$1,879,750,000
SEA-LEVEL CANAL	1.75	875,000	319,375,000	1,596,875,000
SAVINGS	$ .31	$ 155,000	$ 56,575,000	$ 282,875,000

[1] Dollars per barrel

[2] At 500,000 barrels/day rate

In addition, a sea-level canal could be transited by our aircraft carriers, which are too large for the present facility. At present, a Carrier Task Group moving from one ocean to the other must send part of its force around South America while the remainder transits the canal, only to lie idle for 10 days while the rest of the force catches up.

As an example of the strategic shortcomings and military inefficiency of the present canal, let us assume there is an emergency in the Mediterranean which calls for reinforcement from a Carrier Task Group stationed on the West Coast.

Under present conditions, the Task Group's crusier and 15 of its destroyers would sail through the canal, reaching Gibraltar in 15 days. Meanwhile, the carrier and an additional 10 destroyer escort would steam the additional 5000 miles around Cape Horn, not reaching Gibraltar for 25 days.

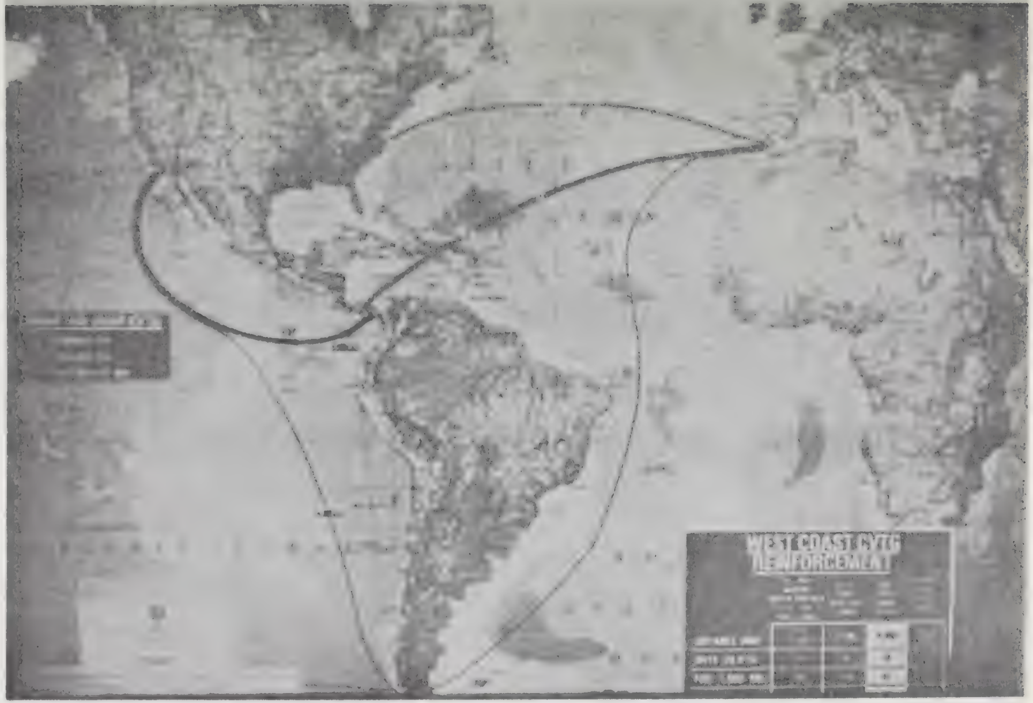
If a sea-level canal were available, the entire Carrier Task Group could reach Gibraltar in 15 days, at a savings of 47,000 barrels of fuel and $870,000. The strategic flexibility this would provide our Navy would be equivalent to adding an entire Carrier Task Group to our arsenal. In effect, this would provide us an additional $20 billion in defense capability at no extra cost to the taxpayers. (See Map 4.)

Taken together, the military and foreign policy values, the savings from retaining existing energy delivery infrastructures, and the reduced transportation costs of a sea-level canal would appear to justify such a project even in the absence of strict financial feasibility, which, as we have seen, is far from lacking.

The United States - perhaps in conjunction with other interested parties such as the State of Alaska, the international oil companies, Japan, Mexico, Venezuela, and countries on the west coast of South America - could guarantee the bonds to finance a new sea-level canal fully owned and operated by the Panamanians. It would be strictly a business arrangement with a Panamanian guarantee of access and reasonable tariffs as the only quid pro quo. This would provide Panama the economic control over her resources she demands, and would at the same time defuse the present controversy. The United States, for her part, would obtain the economic advantages already pointed out, and would achieve her ultimate goal of a defensible canal available to all at reasonable rates.

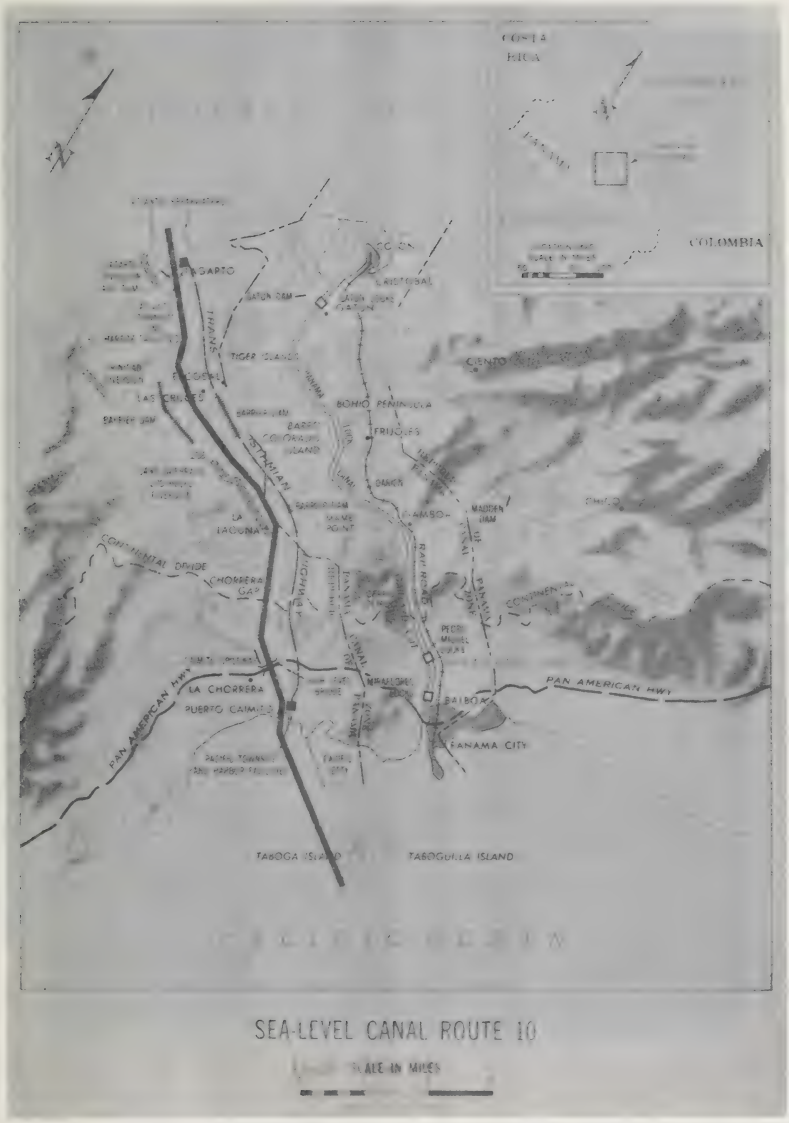
I think there can be no doubt that the advantages to the United States are sufficiently great to warrant the authorization of a further $8 million to update the comprehensive work already done by the Canal Study Commission. This update would include (1) a

MAP 8



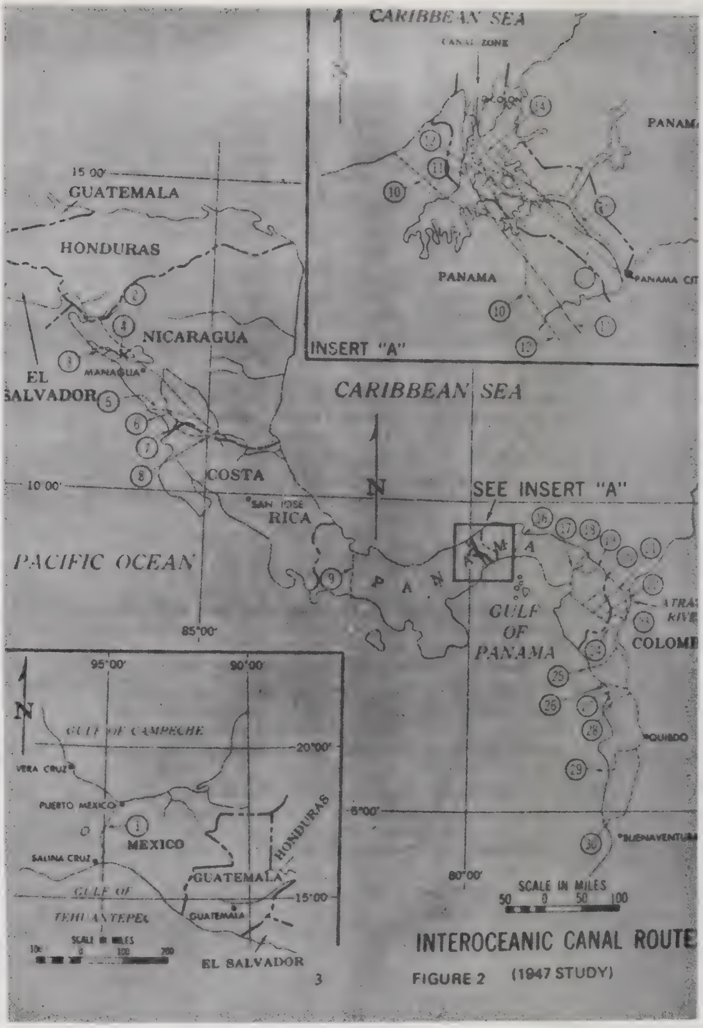
WEST COAST CVTG
REINFORCEMENT

review of the shipping study, including an update of transportation economics; (2) a review of potential environmental effects, including the preparation of an environmental impact statement in accordance with section 102 of the National Environmental Policy Act, with special attention being given to potential ecological effects of the migration of marine organisms through a sea-level canal; and (3) a review of the 1970 engineering findings and recommendations.


COSTA RICA
COLOMBIA
COLON
CRISTOBAL
GATUN DAM
GATUN
TIGER ISLAND
PIÑA
LAGARTO
TRANS ISTHMIAN HIGHWAY
LAS CRUCES
BARRIER DAM
BOHIO PENINSULA
FRIJOLES
BARRO COLORADO ISLAND
CANAL
GAMBOA
RAILROAD
MADDEN DAM
CHILO
CIENTO
LA LAGUNA
CONTINENTAL DIVIDE
CHORRERA GAP
PANAMA CANAL ZONE
PEDRO MIGUEL LOCKS
MIRAFLORES LOCKS
BALBOA
PANAMA CITY
LA CHORRERA
PUERTO CAIMITO
PAN AMERICAN HWY
TABOGA ISLAND
TABOGUILLA ISLAND

SEA-LEVEL CANAL ROUTE 10

SCALE IN MILES


CARIBBEAN SEA
CANAL ZONE
COLON
PANAMA
PANAMA
PANAMA CIT
INSERT "A"
15 00'
GUATEMALA
HONDURAS
NICARAGUA
MANAGUA
EL SALVADOR
CARIBBEAN SEA
10 00'
COSTA RICA
SAN JOSE
SEE INSERT "A"
PACIFIC OCEAN
P A N A M A
GULF OF PANAMA
ATRATO RIVER
COLOMB
85°00'
QUIBDO
BUENAVENTURA
8°00'
80°00'
SCALE IN MILES
50 0 50 100
95°00'
90°00'
GULF OF CAMPECHE
20°00'
VERA CRUZ
PUERTO MEXICO
SALINA CRUZ
MEXICO
GUATEMALA
HONDURAS
GULF OF TEHUANTEPEC
15°00'
GUATEMALA
EL SALVADOR
SCALE IN MILES
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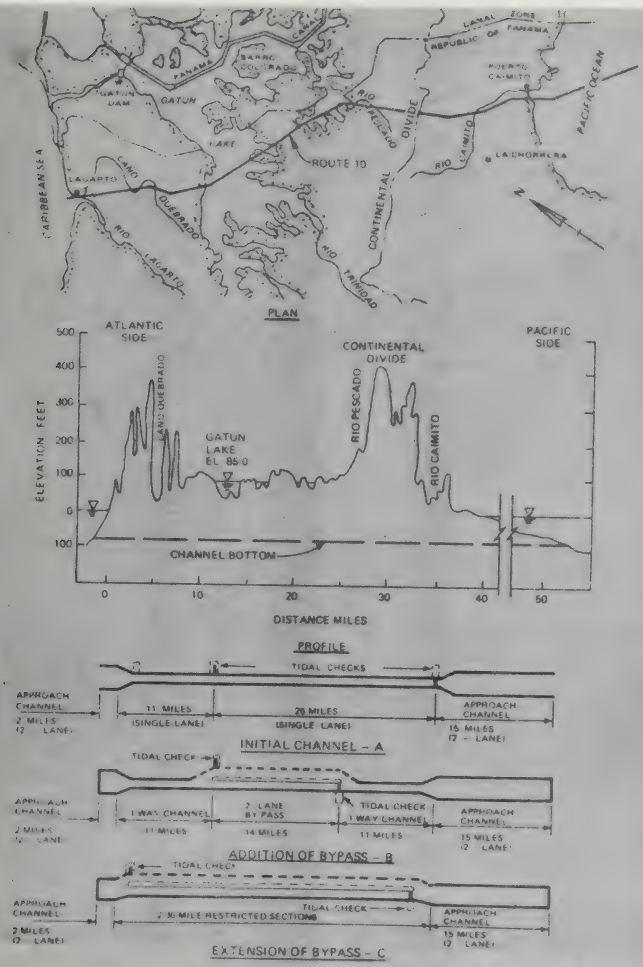
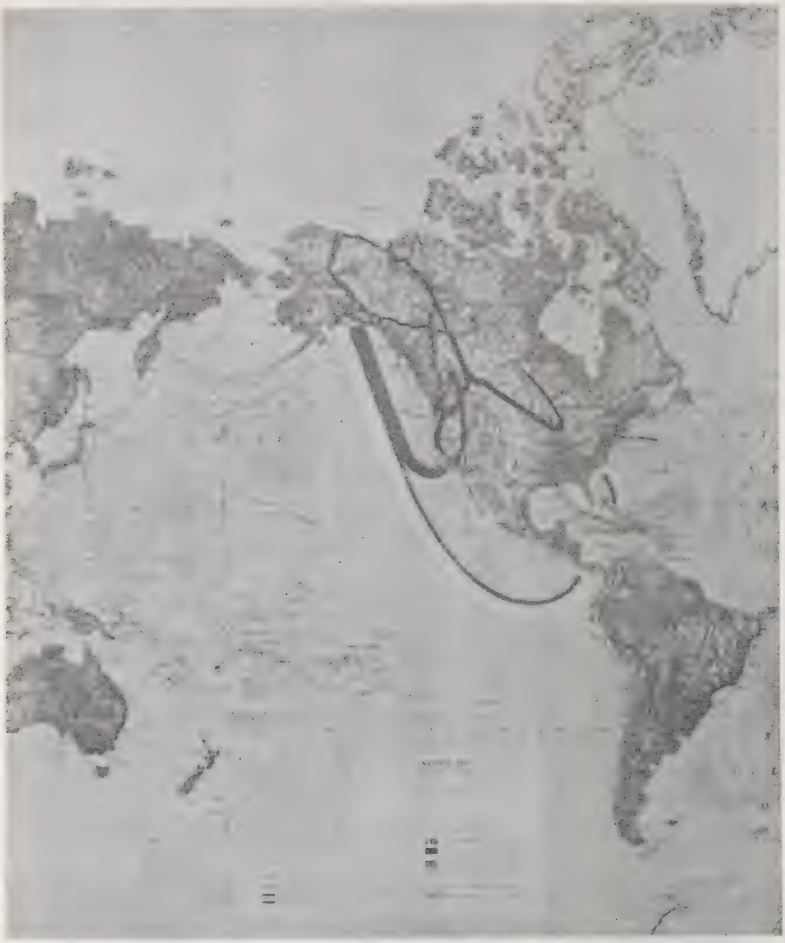
INTEROCEANIC CANAL ROUTE

FIGURE 2 (1947 STUDY)


CANAL ZONE
REPUBLIC OF PANAMA
PANAMA CANAL
BARRO COLORADO
GATUN DAM
GATUN LAKE
PUERTO CAIMITO
PACIFIC OCEAN
RIO PESCADO
CONTINENTAL DIVIDE
RIO CAIMITO
LA CHORRERA
ROUTE 10
CARIBBEAN SEA
LAGARTO
CANO QUEBRADO
RIO LAGARTO
RIO TRINIDAD
N
PLAN
ATLANTIC SIDE
PACIFIC SIDE
CONTINENTAL DIVIDE
CANO QUEBRADO
RIO PESCADO
RIO CAIMITO
GATUN LAKE EL 85.0
ELEVATION FEET
500
400
300
200
100
0
100
CHANNEL BOTTOM
0
10
20
30
40
50
DISTANCE MILES
PROFILE
TIDAL CHECKS
APPROACH CHANNEL 2 MILES (2 - LANE)
11 MILES (SINGLE LANE)
25 MILES (SINGLE LANE)
APPROACH CHANNEL 15 MILES (2 - LANE)
INITIAL CHANNEL – A
TIDAL CHECK
APPROACH CHANNEL 2 MILES (2 - LANE)
1 WAY CHANNEL 11 MILES
2 LANE BY PASS 14 MILES
TIDAL CHECK
1 WAY CHANNEL 11 MILES
APPROACH CHANNEL 15 MILES (2 - LANE)
ADDITION OF BYPASS – B
TIDAL CHECK
APPROACH CHANNEL 2 MILES (2 - LANE)
2 36 MILE RESTRICTED SECTIONS
TIDAL CHECK
APPROACH CHANNEL 15 MILES (2 - LANE)
EXTENSION OF BYPASS – C

ROUTE 10 CHANNEL CONFIGURATIONS

1700



Mr. HUBBARD. Senator Gravel, the subcommittee does not have any questions on your proposal for a sea-level canal study. The record on this issue was amplified extensively in hearings last year. There are just a few matters we would like to raise.

You are the first Senator we have had testify before us in this hearing. Just out of curiousity, how did you vote on the Panama Canal Treaty?

Senator GRAVEL. I voted for it and labored hard for its passage.

Mr. HUBBARD. Do you think the cost to the taxpayers of a sea-level study would be considered in debate on implementing legislation?

Let me ask this again: Do you think the cost to the taxpayers of a sea-level study would be an issue in debate on the implementing legislation?

Senator GRAVEL. I think it would add to the debate and it probably would be helpful in passage of the legislation. The $8 million that is requested is a very small sum in comparison to the present economic costs that are being paid for by American industry with the inefficient transportation of Alaskan oil alone, not to speak of the other inefficiencies that exist.

So I would hope you could make an argument on the floor that this investment in removing a geographic barrier to more efficient economic factors of our transportation system would be meritorious.

I would even suggest that the $8 million study moneys could be recouped if the project goes forward. First financing would be to pay back the Government our portion. Or the $8 million could be part of our third of the guarantee.

I think it is money well spent on the future, and it need not be money to just go for a grant if you wanted to tie some strings to it.

Mr. HUBBARD. Is it important that the sea-level canal study, in implementing the bill, be recognized by the Republic of Panama as a joint study contemplated by paragraph 1 of article XII in the Panama Canal Treaty?

Senator GRAVEL. I think they would immediately recognize it. But the study is couched in terms that there is no prejudgment made that Panama is the location. The 1970 study recommended Panama. It is my personal judgment it will be Panama, and the site is 10 miles west of the present canal. But because of the political exigencies in the Senate and in the House, we thought it best to not prejudge that and to reexamine the 1970 study, and then at the end of that year, if the council does choose Panama, then you invite in the Panamanians to join forces with you. But that would be the time that you would seek their participation.

Moreover, all conversations I have had with Panamanians and with our negotiators, Mr. Linowitz and Mr. Bunker, indicated that the Panamanians were very supportive in that regard. Of course, our Secretary of State, who is the official involved in our relationships with Panama, would sign off on this study—that would satisfy article XII of the treaty, and it is the understanding of Panamanians that it would satisfy that element of the treaty.

I might say that I was the one who was instrumental in getting that language in the treaty as a result of my findings.

Mr. HUBBARD. Thank you, Senator.

Congressman Carney of New York.

Mr. Carney. Thank you very much for coming today, Senator. You will have to excuse me. I am a freshman Congressman and as such did not participate in the hearings last year on the sea-level canal.

I have one question.

The basic question is, do you have any ballpark figure as to the cost of the sea-level canal?

Senator Gravel. Yes.

In the study I will leave here for the record, we cover that quite amply.

The cost in 1970—which, incidentally, was a study that went from 1964 to 1970, initiated by Lyndon Johnson, and cost the taxpayers of this country some $22 million—the cost they came up at the time was $2.8 billion. That is on the assumption that construction had been initiated right then in 1970.

I solicited from the Corps of Engineers an estimate in 1977 figures, at which time the total was $5.3 billion. Obviously, we cannot get started constructing it until a study is complete 3 or 4 years hence; we are talking about probably $10 billion then, and as delays continue, those costs would increase.

But I would like to show you one chart which shows projections by the 1970 Commission. If I could just show it to you from here [indicating].

This line here indicates the 1970 study finding that you could amortize the cost of the sea-level canal over 60 years at 6-percent interest. The interest would be somewhat higher now, but actual revenues during the time since 1970 that you could retire the construction cost very handsomely.

I am being reminded by staff that when I visited the Netherlands, I talked with one of the largest and most experienced dredgers in the world. We spent a whole evening with them. It is their judgment that the cost would probably decrease from a unit point of view. Inflation will take place, but the new expertise and the techniques available now to dredging would decrease the unit cost in constant dollars from what was projected back in 1970.

Mr. Carney. With the present treaty, we have a $319 million debt involved that the administration would like to write off; when the Panamanian Government takes over the present canal, we would consider that as a writeoff. H.R. 111 looks at it in the other vein, and we think it should be paid off and it should be built into the pay structure.

I am looking at your chart where you feel that this payment for the canal can be paid off. We cannot even get the original canal paid off.

Senator Gravel. The original canal has been paid off many, many times.

You see, what has happened was, the Panama Canal Company changed bookkeeping procedures. The canal has been operated as a nonprofit public utility, benefiting economically developed nations of the world, because those are the nations using maritime transportation.

Had there been accurate bookkeeping, the Panama Canal would have been every bit as profitable as the Suez Canal.

The Suez Canal, when first built, was one of the finest economic ventures in the history of the free enterprise system. That is why it was so easy for Dr. Lesseps to raise the sums of money that he did to go into Panama. His failure was one of a technical nature, not an economic nature. So I think it is somewhat perverse bookkeeping to now turn around and say the Panamanians should pay us a debt when in point of fact we, through subsidies to our consumers, by keeping the tolls at a very low level, have subsidized the maritime industry and anybody who bought a product that went through the Panama Canal.

Now, we have given back the canal, 57-percent obsolete, and by the time they will own it, it will be 90-percent obsolete. Why should we add on to that that they should pay us cost of construction, which has been handsomely amortized many times over?

Mr. Carney. I think you and I see that a little differently. I see them owning the canal on October 1 of this year, just about. You are saying that you think it could be paid off like the Suez Canal or could be constructed with private money.

Why do you think it is necessary for the United States to get involved in financing a new canal if it is such a viable economic entity to free trade? Why should government get involved in it?

Senator Gravel. Because government can establish regulations that can prevent its economic realization. If you do not have government involved, you could finance the pipeline from Long Beach to Midland, Tex., just like that; but since you have government capriciousness, it becomes risky and uneconomical.

So if it is guaranteed, then I think it could be done totally by the private sector.

When you have subsidies in transportation, competing transportation modes trying to get advantage through law, governments have to step forward and provide guarantees in the economic arena so as to forestall any political machinations that will be detrimental to the project.

Mr. Carney. You mentioned government subsidies and rate structures, and that we are having bogus bookkeeping, as you consider it.

We also talk about sensitivity of the cost of using the canal, and when you raise rates, the use declines. That has an adverse effect on the canal.

Now, apparently, if we did not subsidize these rates, the canal probably would have lost its usership. If we do not want to subsidize rates, will that take place with the sea-level canal?

Senator Gravel. No. The canal was there and would have been used. We just made the canal cheaper for people to use. The subsidy has been to the consumer, not to the canal.

We built the canal, kept its use very cheap—and I do not think the implication is there, or should be there, that had the tolls been at full elasticity or close to full elasticity that the canal would not have been used. The canal was recognized by economists as far from full elasticity. If you were not at full elasticity, you could have raised the tolls and still have the same traffic; but by not raising tolls, we subsidized the people who were using it. We subsidized our own maritime interest, a third of the traffic, plus we subsidized Europe too.

Anybody who used it was subsidized by our policy.

Mr. CARNEY. I agree with you on that, but for the last nine meetings which we have had in this committee, the subject of tolls has been an issue which has been of great concern, and it seems to me to be in the minds of many experts that the existing canal could not withstand the toll increase of perhaps 25 percent, as one of the numbers that have been floating around. I have heard that more than any other, that the elasticity of the toll structure would be at its end with 25-percent increase with existing canal right now.

Senator GRAVEL. Nobody will be putting it above 25 percent. That would be suicidal.

Mr. CARNEY. Apparently the Panamanian Government is not too concerned about that because there is $1 million a year to start with, pushing canal revenues almost to that point right now, and Senator, I see the Panamanian Government as a government that really does not want to cooperate with the U.S. Government with the present canal and I do not know why you would think they would cooperate with us in a venture to build another, sea-level canal, unless once again we had this outward willingness to give away the store.

In the last 3 or 4 weeks it has been noted that the cost of the canal to the American taxpayer—the Senate was under the impresssion it would be zero—it is up to about $4 billion. The American taxpayer is going to subsidize the giving away of the canal to the tune of $4 billion and turn around and build a new one—that is running around $10 billion. I do not think the taxpayer will tolerate that. Perhaps the news does not get to Alaska as fast as it does to Long Island.

But the taxpayers on Long Island do not want to give away the present canal at $4 billion price tag. They are very sensitive to the way the Panamanians treated us when we went down there; I do not see why we would think the taxpayer in America would be willing to pick up an additional cost and why, after my observations of the way the Panamanian Government treats us, that they will treat us any better if we build another canal. We will build another jewel.

Senator GRAVEL. There is nothing I have said here to suggest that we build and pay for another canal. I hope I can disabuse you of that impression.

Second, I think the people of Alaska are just as enlightened and independent as the people of Long Island particularly in some cases, such as energy, maybe a little more enlightened.

Third, the cost of the canal of $4 billion that you cavalierly throw out is the cost of the defense of the canal, not the cost of the canal.

The cost of the canal is somewhere around $350 million and the cost of defending it has been in excess of $4 billion.

I submit with a new sea-level canal, that might remove the lion's share of any prospective cost of defending it, since it would be a lot easier to defend the canal. Buried in that cost are also a lot of other military and defense activities relative to our position in the Americas.

I also might say that the orifice of expansion in time of need, which of course is the essential defense benefit of the canal, is total in the case of a sea-level canal.

We only have one port on the west coast of the United States that can handle munitions.

We have always counted on, in case of a Pacific war, of expanding and moving our munitions and other needs through the canal. That has taken place during the Second World War, during the Korean war and during the Vietnam war. I hope you would not be too cavalierish with your statement that we are giving the Panamanians $4 billion-some-odd. $4 billion-some-odd was money that were paid to help us prosecute the Second World War, the Korean war and the Vietnam war.

Mr. CARNEY. I am talking about the cost, Senator, that it will cost the American taxpayer to turn over the canal right now.

Senator GRAVEL. What is that cost?

Mr. CARNEY. $205 million cost to subsidize early retirements for the people who work in the canal. I might cavalierishly turn out a figure of $4.3 billion, that is what this subcommittee seems to find. I want to remind you, Senator, that the Senate and those who were proponents of this treaty cavlierishly said it would not cost the taxpayer anything. I daresay when the administration admits to $801 million cost right now, my figures are closer than yours, that say it will not cost anything. I think $4.3 billion is a more accurate figure. The point I am trying to bring out is this: I feel after being down in Panama and after listening to these hearings that the Panamanian Government does not really care too much about the United States, what it is going to cost the taxpayer to give this original canal back. They are just about putting us to the wall. I think there are many members on this subcommittee who are so concerned about the treaty that there might be a move toward not reporting implementing legislation. I fear if you tried to come up with the idea of a new canal down there, that might just fuel that feeling, and we might interrupt the possibility of chnanging, implementing a treaty that presently exists. We have so many problems right now, so many sensitive areas that we are dealing with, with the present treaty to throw in the concept of a new canal in Panama, I think it is untimely now at any rate. If I might, I would like to ask you to be a little more specific on article XII. I was under the impression that we were somewhat tied into canal studies, canal studies within the nation of Panama through article XII of the treaty.

Senator GRAVEL. I think if you will make a close examination of the Senate record and what the Senate did, you will see that you are in error.

Mr. Carney Pardon me?

Senator GRAVEL. You will see you are in error. There is no tie-in to Panama.

Mr. CARNEY. We have the latitude——

Senator GRAVEL. We can study it in Nicaragua if we want—put it in Nicaragua if we want. That was action taken by the Senate.

Mr. CARNEY. I am asking that for clarification.

Senator GRAVEL. I am giving it to you.

Mr. CARNEY. I read it as such and you are looking at another way.

Senator GRAVEL. No. I am not looking at it another way. I am looking at it the way the Senate passed it. I wonder if maybe the Chairman might get for the record—I find it quite astounding that it would cost $250 million to buy off American employees——

Mr. CARNEY. $205 million.

Senator GRAVEL. I would be happy, Congressman, if you would give me those figures.

Mr. CARNEY. It was part of the record of the hearings, Senator. It was brought out in testimony.

Senator GRAVEL. I will look at that hearing very closely. I might say, when you say Panamanians do not care for us, I have been to Panama several times. I find that they are good friends of ours. Their track record has been as good friends of ours. They have a certain desire to realize their own national identity. We do the same thing. We probably do it in Long Island too. I do not think it is all that difficult to understand the concept that you have a present canal, the present canal may be obsolete, and if it is obsolete, you ought to think of a new one. If you think of a new one, and you want to do it in a very relevant way, you would let them own it, build it, and if we are required to help in financing, and it is in our economic interest to do it, that would be done. If you and the rest of Congress do not think it is in our economic interest after the study is made, and I am really quite surprised that there would be a rush to refuse to acquire additional knowledge about something as fundamental as this—well, I am not advocating to build a canal, my dear colleague. I am advocating to study whether we should build it. There is a substantial difference.

Mr. CARNEY. I would agree that there is a substantial difference. I have a problem living with the idea of studying to build a canal when 85 percent of the people in my district do not want to give up the canal we have right now. That would be a tough one to sell.

I also would like to say, where I might find difference in Panamanian attitude toward America is when we were down there, we were told by Panamanian officials that they have every right and they have the desire to backtax American businesses that have been there for the last 7 years. Now, that is not part of the treaty. It is explicit that it is not part of the treaty. Yet they are being arrogant on that particular issue That is not an attitude of good will between two nations.

Senator GRAVEL. Congressman, I want to say that I think you are operating on some very unusual misinformation because I met with the American Chamber of Commerce in Panama City. Now, if all those American businessmen think they are going to be backtaxed, then they sure do not know it, because they have gone on record in past resolutions endorsing the course of action that was taken by the executive. And for you now to make statements, and being quite respectful to you, sir, which I think are ridiculous—there has been no official statement about back taxing and the American establishment, the private companies, American companies living and earning money and operating in Panama do not anticipate any taxes. If they did they obviously would oppose the course of action that is being recommended They endorse it. I have met with them. I have met with 50 of them. They are all very strongly in support of it. I do not know where this figure comes from that somebody is going to backtax American interests as some punishment.

Mr. CARNEY. It comes from subcommittee hearings that we held in Panama and was a statement made by a Panamanian official. That was less then 3 weeks ago.

Senator GRAVEL. What official?

Mr. CARNEY. It was done by the Deputy Director of Panama Canal Authority, Mr. Manfredo I believe is his name.

Senator GRAVEL. Could you quote his statement of backtaxing?

Mr. CARNEY. He said they had every intention to backtax American entities and businesses down there.

Senator GRAVEL. I would be happy to check into this. It strikes me as a preposterous statement. I would be happy to check into it and get back to the committee whether he made that statement and in what context the statement was made. If it is what you are interpreting it to be, you would have heard immediately, I am sure, from the American Chamber of Commerce in Panama.

Mr. CARNEY. In all due respect, Senator, we did. We had quite a reaction from the American businessmen when that became evident.

Senator GRAVEL. And have they testified before you?

Mr. CARNEY. That is correct.

Senator GRAVEL. What is their testimony?

Mr. CARNEY. They are concerned not only about that particular aspect of it, but there also was a different concern that was brought up, and that is nonprofit corporations down there, the churches, the fraternal organizations, the Panamanian Government has made it quite obvious that they are going to tax these nonprofit organizations and they are going to charge them utility rates that will be triple what they are paying right now They are going to change the whole social pattern of these nonprofit organizations. There was a tremendous amount of concern brought up in public hearings held in Panama 3 weeks ago.

Senator GRAVEL. Congressman, I must say I find it quite preposterous for somebody to say that the entire fabric of socioeconomic life in Panama is going to be changed by this through some threat to somebody. You are talking about taxing churches. You are talking about a country that is considerably more religious than we are. You are telling me they are going to start taxing the Catholic American Church down there?

Mr. CARNEY. I am telling you what they said. It is part of the record.

Senator GRAVEL. I do not think they will.

Mr. CARNEY. I would suggest you read the record of the hearings that we held in Panama, and you will see that there is a difference of opinion of how the Panamanian Government views our businesses down there and our nonprofit organizations, and that the attitude is one that certainly is not an outward sign of cooperation between the United States and the Panamanian Government.

Senator GRAVEL. Panama suffers from a problem that we have many times, and that is they are relatively a free country, and so they cannot be held accountable for all the irresponsible statements that some of their public officials might make. But I personally guarantee that I will look into it because I think some of the statements which you are resting your case on appear quite irresponsible. They are going to operate just like anybody else. That is, they are going to be dictated by what is economically feasible.

It is not economically feasible to chase people away.

Is it not interesting that you attribute all of this potential malfeasance to a government that from 1969 to 1977 has become the second banking center of the world? We are not talking about socialized government activities. We are talking about some 80 international banking concerns which have gone into that little country to operate it. If there is going to be backtaxing and all of these terrible machinations that you are predicting, boy, these people down there do not know it. It is what I would consider the crucible of free enterprise society. We have seen it grow before our very eyes.

Mr. CARNEY. I would have to say too that I differ in the interpretation as to how much freedom there is in Panama and how much there is here. Perhaps there are officials of the Panamanian Government who take it upon themselves to make statements. But those statements were made and they were made very clear. They are part of our record. I think it would behoove you to look over the record of that particular meeting. They are quite extensive. We had many hours of hearings down there.

But the meeting that we had with the Panamanian Government would be quite eye-opening, particularly in dealing with the issue of back taxes and dealing with taxing of nonprofit organizations. These are just a few of the points that were brought out when we were down there, and that to me indicates the Panamanian Government has very little concern about the U.S. Government. Their concern seems to be more in line with getting $75 million in toll revenues, that we have projected, more than anything else.

Another question that I might add is in doubt with the Panamanian Government's interpretation of article XIII of section 4, paragraph C, the $10 million, is the additional $19 million if there is a profit. The Panamanian Government does not see that as being a question of whether there is a profit or not. They see that as their being entitled to the $10 million. Once again that is to me a reflection that their willingness to cooperate is really not there.

Mr. HUBBARD Thank you, Congressman Carney.

Mr. CARNEY. Thank you, Mr. Chairman.

Mr. HUBBARD. Regarding the dialogue with Fernando Manfredo, Deputy Director of the Panama Canal Authority, we do not know whether what he said was a personal opinion or an official position of the Government of Panama. We will try to get clarification from the Ambassador on that.

Senator GRAVEL. Mr. Chairman, I could only say that there is no control over public officials making statements, no more than here. I am sure somebody will be telling somebody in Panama to read this record based upon statements made that this is policy.

Of course it is not even close to policy. I think all you can do is judge what has happened in a country. I think the events speak for themselves. The empirical evidence is that a small country, Panama, during a period of essentially a military leadership, was able to bring into being a banking center that is only excelled by Switzerland. A free banking center is testimony itself to the kind of policy that will be exercised by that government in the future.

Mr. HUBBARD. Does counsel for the majority have any questions?

Mr. TANNENBAUM. No.

Mr. HUBBARD. Minority?

Mr. MERIN. No, thank you.

Mr HUBBARD. Congressman Carney does not have any more questions?

Mr. CARNEY. I will yield to my Chairman.

Mr. HUBBARD. He is an outstanding freshman, and I might add, if you were to go to his district or mine, we would be careful mentioning how you voted on the Panama Canal Treaty. We would do you that favor so you could get out safely.

Senator GRAVEL. I would offer this to you and to Mr. Carney. I would be happy to go to your districts, and if you wanted to put together a very large meeting, I think I could make a case on what is in their enlightened self-interest. They may have strong emotions. But I have found usually when people become enlightened to what is going on in their pocketbook, that they sometimes try to control those emotions, particularly when you have yourself on Long Island the oil company that is making the most money off of the transshipment. The company is in Long Island, and you have a port there that is receiving oil that is coming through the canal.

I can only submit that if we can get our product to you cheaper, it means that the cost of energy will decrease in Long Island. I would be happy to go into your district if you wanted to set up a large meeting and take my chances on being tarred and feathered; but if they are so ignorant that they want to risk their economic interests and subvert that to their false emotional constraints, fine. I will be happy to take my chances at that. If you want to check on that, the company's name is Northville. They are from Long Island. They are doing very handsomely at our expense.

Mr. HUBBARD. This is just friendly dialog, Senator. Congressman Carney and I have a lot of constituents who are for the Alaska wilderness bill.

How do you stand on that?

Senator GRAVEL. I am opposed to that. I would offer to go into your district also and talk to those people about the efficacy of the wilderness bill. If they feel they do not need any more oil or gas, then all you have to do is vote for the wilderness bill and that will lock Alaska up and not another drop will come out of Alaska. That may be what your people want.

There may be those who want to put on a loin cloth and go back into the caves. We do not want to do that.

Mr. HUBBARD. Congressman Carney has one more question.

Mr. CARNEY. I would just like to say to the defense of the people in my district, Senator Gravel, that they are not ignorant people. I think they are very intelligent. I think they have an awful lot of emotion. Perhaps the reason they have this emotion is because they have been misled by the administration and perhaps by the Senate, if the Senate was cognizant of what the ultimate cost of this treaty will be when they passed this treaty. The people in my district were under the impression that the treaty would cost the taxpayers nothing. Unfortunately in the last several weeks the price tag of this has gone up and up and up. They are not ignorant. They are somewhat upset. They are upset about perhaps the integrity of government, the Federal Government, the way they have been misled over the Panama Canal issue. Believe me we have a great sensitivity to the cost of oil. I might add that I am a proponent of opening up the oil that is available in your great State. I can understand it and believe me there are few loin cloths on the people of my State except perhaps in the Shinikook Reservation during festival time. But other than that, my constituents wear normal clothes and they have their normal emotional feelings and their emotional feelings rise to a high when they are misled by the Federal Government.

There is no doubt in my mind, and I believe there is no doubt in the minds of perhaps 85 or 95 percent of the people in Suffolk County, Long Island, that they have been sold a bill of goods on the Panama Canal Treaty both by the administration, and if the case may be that the Senate was aware of the price tag—well, in all due respect I do not believe the Senate was aware, and I believe they were misled too. I believe the Senate was being misled and should take corrective action and maybe go back and rescind the Panama Canal Treaty. Then people in my district would be very, very happy. Then perhaps we could get on to studying a sea-level canal so we would have a canal of modern technology that can meet the needs of the people of Alaska and we can accommodate the large fuel oil tankers. We would love to have the price of gasoline as low as possible and the price of home heating fuel as low as possible. I see in Alaska the potential for eliminating foreign dependence on oil. I agree with you on that much. What really hurts is the treaty, Senator.

I hope you do not take any of my remarks personally. I am young, I am just a little bit wound up over this whole thing. We have had many, many hours of hearings here and each time someone comes in, I find out once again that the people of the United States were misled and the price tag goes up and up and up. Perhaps my frustrations have been brought out this morning. In all due respect to you, Senator, I am sorry it had to be a Member of the other body. But perhaps I might have the information to go before your great body and give testimony and you can allow your frustrations to flow at me.

OK?

Senator GRAVEL. Congressman, I want to assure you of one thing. You may be new here, but I think it is great to exercise your frustrations and emotions. It opens the mind, irrigates to a certain degree your intellect and hopefully the process is one that adds to your body of knowledge and judgment as you go forward. I am very familiar with your part of the country. I come from there. I used to drive a taxicab in New York City and went to Columbia. I love New York. I think New York is the queen city of the world and have tried repeatedly to bring about improvement. I am also aware of a lot of the problems that do exist with respect to energy policy in the East. I think you, Mr. Chairman, are very sensitive to that with the coal policy. People want things and do not want to pay for it, and we have a lot of demagogues in Government who tell them they do not have to pay for it. We tell them we can pass a law that changes the laws of economics. We cannot do that. What we do is subsidize foreign interests. You keep repeatingly saying, Mr. Carney, that the Senate was misled or the administration misled. The administration never said once—I am very familiar with the subject—never said once that this would cost nothing. Now, maybe the opponents said it would cost nothing so as to put up a straw man to knock down. I think that is a tool of argument that is used. But it is not a very accurate one. When you say that if we could put this aside, we could then get to building a sea-level canal, I do not know where you are going to build a sea-level canal—maybe across Long Island or the United States—in order to build a sea-level canal in Panama, which is 100 percent cheaper than any other site possible, you are going to have to have the good will of the Panamanian people. The Panamanian people feel they have been raked over our economic interests, and they want to see that corrected. I think it is a reasonable desire on their part. I think it is reasonable on our part to then court them and try to bring about some justice, and hopefully we then can go forward to a new undertaking which would be the sea-level canal.

But I will assiduously watch your vote and the vote of others. When they vote against a study to determine what our economic interest is, I can only say then these people are steeped in ignorance and do not want to improve their knowledge. If you are prepared to support a study to find what is in our best interest, I would commend you. If a refusal becomes apparent, that you do not want to know what is in your economic interest, and you continue to beat a dead horse in Long Island, then I submit that you do not do a service to your constituency. Eventually that will be recognized. One thing that Harry Truman added to the lexicon of political thought is that if you do not solve the problem, it will keep coming back until you solve it.

Mr. CARNEY. One last comment. It seems that when anyone disagrees with the great Senator from Alaska, they are ignorant in the political process. I do not see that to be the case.

Senator GRAVEL. I would not want anything that you said to me to be considered personal, and I would not want anything I said to be considered personal or cast aspersions upon my good colleague from Long Island. Not at all. I was referring to forces abroad doing this. I know you are not guilty of any of their demagoguery.

Mr. CARNEY. I think we could utilize our time better. I will yield back to the Chair.

Mr. HUBBARD. I would certainly agree with the Senator that the Congressman from New York is not guilty of demagoguery. Actually I congratulate him for his eagerness to protect U.S. interests. I further realize Senator Gravel's interests are the same.

We appreciate your being here.

This next question is for your benefit, believe it or not. We have an Environmental Panel which preceded you and they are coming right after you. They will be answering questions soon. We know environmental concerns are covered in your proposal. I am trying to do you a favor. You might mention some of these before they follow you.

Senator GRAVEL. Of the $8 million, approximately $4 million of it will go to the environmental study—to assess the possibility of mixing the two oceans, what would be the ramifications of that, base line studies, what would be the way to handle that particular problem. We essentially structured the study as suggested by the environmental community, asking them what they felt should be undertaken so that a judgment could be made.

Here again I want to stress, we are not saying build the sea level canal. I have done my own study and if I were in command, I would go build it right now. But that is not what we are suggesting. We are suggesting that we undertake a study to ascertain environmental problems involved, technical construction problems involved, financing problems involved. If one does not even want to study the problem in the face of a canal that is 57 percent obsolete, then I am perplexed. I do appreciate the opportunity you gave me to underscore the environmental concern. I can only say to the environmentalists who oppose the project from even being studied, that again raises a very serious question in my mind.

Mr. HUBBARD. Thank you very much.

Senator GRAVEL. I appreciate the time and the courtesy you have given me.

Mr. HUBBARD. Now we will have the environmental panel come back to the table.

The next question for the panel is: Can the Joint Commission be kept apolitical in the contentious environment we have had on the Isthmus of Panama, and will the new environmental arrangement in Panama override contentions of the past?

Mr. ROBINSON. I would defer to my colleagues who have spent substantial time in Panama. I have been terribly impressed that the Panamanians on their side want to go ahead with a very careful implementation of the Joint Commission. There is a substantial body of scientific expertise in Panama to make that intent realistic. It is not like many countries in the Third World where you do not have that body of expertise.

Mr. WRIGHT. I think originally there were some sensitivities in Panama as in other Third World countries. That the environmental questions associated with the treaties might be another layer of issues whose goal is to frustrate what they see as their desires; however, I think over the last year the Panamanians have demonstrated in many ways a growing concern and willingness to work on environmental questions. The record of the last year is very encouraging. The declaration of a park including a major area of the Canal Zone is the most tangible example of their growing commitment. All of us who have worked on these issues have felt a tremendous amount of good will from the Panamanians. There still is no guarantee that it will keep the JCE apolitical of course but I think the last year is encouraging.

Mr. HUBBARD. Should appointees to the Joint Commission be subject to Senate confirmation?

Mr. ROBINSON. My own view is that give us another opportunity for oversight. This is a bi-national group. If we are giving it seriousness, it is more likely that the Panamanians will treat it seriously.

Senate confirmation would give an opportunity to examine which issues are examined and which are not. I accept the appropriations process to fund it from the U.S. side and come up with whatever method they think is appropriate from the Panamanian side. I think the Senate confirmation might be useful.

Mr. WRIGHT. I endorse that as it applies to the U.S. Commissioners.

Mr. HUBBARD. Senator Gravel discussed the issue of a sea-level canal study. We have had little discussion of that issue in these hearings. I offer you the opportunity to comment upon the sea-level canal issue.

Mr. CAMPANELLA. As a scientist and someone who has worked within the Environmental Policy Act, I see this as an opportunity, as a forum for open public discussion of the issue, and being conducted under the NEPA format and CEQ guidelines, and I see no reason to stay away from a study of this type. I think it would be opened up to close public scrutiny, meetings, public discussion, and it would involve a wide range of inputs into this thing.

As a scientist, I have to agree it would be an excellent idea to go ahead with a study of this type and it would also add to our baseline information and data that we will need for prudent resource management in Panama.

Mr. WRIGHT. The organization which I represent has not taken any position one way or the other on the sea level canal, but in the environmental community as a whole it is an issue which raises some very serious concern. Part of that concern was the possibility of charging ahead without sufficient study. If in fact there is a study, I do not see how any of us could oppose it. We maybe concerned on economic grounds with the cost but that is not really an environmental issue.

Mr. ROBINSON. I have two aspects to my response. First, the Sierra Club Board of Directors, based on studies of the National Academy of Sciences, concluded some time ago that the sea level canal would not be in the best interest of the environment. Only a very small class of ships cannot go through the present Canal. I think the Senator's position on that is subject to some scrutiny. Second, as a lawyer, I have often been criticized and my colleagues in Congress who are lawyers have been criticized for passing laws that are called the "Lawyer Full Employment Act," and it seems to me that the sea-level canal study is a "Scientist Full Employment Act." I am all for scratching the back of the scientific community I do not have any problem with the scientific study if it is well funded, and this one should be.

Mr. HUBBARD. Mr. Wright mentioned a number of observations on the jurisdiction matter. Would it satisfy the panel if a comment were made in the report on implementing legislation regarding the kind of jurisdiction it should have?

Mr. WRIGHT. If the Joint Environmental Commission is going to deal with real environmental issues, the majority of the territory it will have to deal with will be under the control of Panama. That is just a reality. I think that any way we can stress that we would like to have the broadest possible jurisdiction is fine. Whether the Panamanians will argue for narrow jurisdiction will depend on how they perceive the Commission. If they perceive it as a technical commission dealing with common problems, I do not think the question of jurisdiction is going to be very important. Whether

Congress, by putting it on the record, can change their perception one way or the other, I really cannot say.

Mr. ROBINSON. I would hope that would be something on the scope of the Commission's review. The first article, section of article VI, speaks of the United States and Panama protecting all of the Republic of Panama's environment. It is clear that that is insufficient, that we are talking about impacts that could affect the rest of Central America, that could affect the country's—well, if a ship is passing through the Panama and quarantine and safety conditions are not properly observed, and that ship passes to another distant point, it is apparent you are going to have transportation of disease problems.

I would hope that a very broad view of the health environmental and scientific issues would be taken. This is after all advisory. Its only power is to point out problems and recommend solutions. If you constrain that activity, you lose the benefit of the Commission.

Mr. HUBBARD. Congressman Carney.

Mr. CARNEY. Thank you, Mr. Chairman.

Gentlemen, I would assume that you all would agree that the Panamanians are not capable at this particular time from a standpoint of resources, whether they be financial or the knowledge of the science involved, in maintaining that delicate ecology down there. Would it be a fair statement to say that without our assistance we can almost count on the degradation of ecological systems down there?

Mr. CAMPANELLA. I think things have changed drastically in the last 5 years. Panamanian, I would say, manpower resources, technical capabilities, are growing at an extremely fast rate. I think their awareness, their perception of the problem is a crucial issue. If we can only make them aware of the significant problems. After all, we are not dealing with a country with a conservation ethic as well established as ours, and we are dealing with one where the conservation ethic has only been established over the last 8 or 9 years. Given that it is developing and given that the Panamanians are willing, and oftentimes in technical engineering and some other areas are very competent, and given the U.S. initiative, the Smithsonian initiative and the large manpower and training pool that the United States maintains there, my perception of the problem is that it is an extremely good base upon which to build.

To answer your question more directly, I do not think it will evolve into a long-term cohesive program of environmental management unless we give some continuous support at some level over the next 20 years

Mr. CARNEY. I have only one more question to ask. It has to do with the fact that the Panamanians feel they control 200 miles of their shore lines. I am somewhat concerned about the environment and what damages could be done in the Pacific and Atlantic Oceans near the canal and what type of impact that might have on the canal. The thought comes to my mind that the Panamanians might make an effort to do some sea mining in the Atlantic or Pacific that could have a detrimental effect on the environment down there, indeed detrimental effect on smooth flow of the canal and traffic in the canal.

Other thoughts come to my mind. Mr. Robinson vividly brings out the health problems. Certainly if they use the Atlantic or the Pacific Ocean to perhaps solve their sanitary problems, and I do not mean solve—I mean out of sight, out of mind with their sanitary problems, solve their solid waste problems—it is a small country although it has an awful lot of undeveloped land and they do have space problems for solid waste. I have the fear that they might utitilize some of the oceans. I am wondering if the Joint Commission will take into consideration the environmental degradation if it happened to the oceans as well as I know they have shown outward concerns for the watershed area, the canal, Panama in general, but hopefully perhaps this is not a question, this is a statement, that you should have deep concern about the waters of both the Atlantic and the Pacific Oceans.

Is this the intent of the Commission, do you know?

Mr. WRIGHT. I would hope that the Commission has as broad a brief as we can get to look into all these questions. The potential that you are concerned with recently came to light very dramatically. Several years ago Congress suggested to AID that it should start looking at environmental and natural resource questions when it undertook projects. One of the first areas they reviewed was a proposed AID-supported project in Panama to extend sewer lines farther out into the ocean. They looked at the environmental implications of it and they discovered they were going to drop the sewage right into the middle of a major shrimp fishing bed, which for both food and expert economics was vastly more important than the problem they were supposed to be dealing with. With a few changes they were able to avoid this disaster.

We do have to look at this whole question of ocean jurisdiction but I hope the Joint Environmental Commission will be seen as a potential vehicle for information transfer and sharing. I hope from that kind of experience described above in with the AID project people do start taking these environmental matters seriously. So I very much hope the JCE lives up to the potential which Mr. Carney mentions.

Mr. CARNEY. Thank you very much, gentlemen.

Mr. HUBBARD. Thank you very much, Dr Campanella, Mr. Wright, and Mr. Robinson for your testimony.

Mr. WRIGHT. Thank you.

Mr. HUBBARD. We will now hear from Mr. Rogers and Mr. Koczak. We should be through by 1 o'clock. We have one more witness after them: Mr. Washburn will conclude today's hearings.

The subcommittee heard from representatives of the Canal Zone labor union on February 23 and 24 in field hearings in the zone. However the American Federation of Government Employees, which represents more Federal employees than any other labor organization, has understandably indicated their desire to present a separate statement here in behalf of Kenneth T. Blaylock, president of the American Federation of Government Employees.

Mr. Terry Rogers, legislative liaison for AFGE and Stephen Koczak, special projects assistant, will represent President Blaylock.

STATEMENT OF TERRY ROGERS, LEGISLATIVE LIAISON, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY STEPHEN KOCZAK, SPECIAL PROJECTS ASSISTANT

Mr. **Koczak**. Thank you, Mr. Chairman. We would be most pleased to summarize our statement. We understand the entire statement will be part of the record in any case.

[The statement of Mr. Blaylock is included in the testimony of Mr. James J. O'Donnell. One page of the statement, however, differs from the earlier statement. The change is as follows:]

Concluding Statement

We have presented the problems created by the Treaty and by Public Law 95–454 in the area of Labor-Management Relations.

One of the steps which the Congress might consider to overcome the problems inherent in Public Law 95–454 is to amend Section 7103(a)(B)(i) to read as follows (the amendment to that section is underlined)

"(i) an alien or noncitizen of the United States who occupies a position outside the United States, excepting that any such alien or noncitizen of the United States serving in the area made available to the United States by the Republic of Panama under the Treaties of 1977 shall be considered, for purposes of this Chapter, as if employed in a position not outside the United States"

Such an amendment, or one similar in intent, would eliminate the problems we have been discussing regarding the extension to aliens and non-citizens of the United States of the protections of Title VII of Public Law 95–454.

As to those problems which will arise because of the provisions of the Treaties, as distinct from Public Law 95–454, we submit that many of these are difficult to anticipate in concrete terms at the present time and we reserve our position on those issues until they have emerged. However, one of the procedural ways in which we believe they can be best anticipated is through the enactment of legislation such as that which I have proposed in Annex III to this statement.

In conclusion I wish once again to assure you of the fullest cooperation of myself and my staff in addressing all the issues which will arise. Please accept my best wishes and my thanks on behalf of our union and the Federal employees, both United States nationals and those who are aliens, who look to this Committee for the safeguarding of their rights.

Mr. **Koczak**. Mr. Chairman, our statement deals primarily with the issue of labor and management relations. We find certain problems that have arisen from two sets of considerations. Consideration number one is the treaty. The treaty definitely is directed toward displacing American national employees with Panamanian national employees. Our concern was in this situation there appears to be a conflict of interest as among these employees, in addition to a community of interest that they are employees, when they deal with management.

The second consideration that we have to address is enactment of Civil Service Reform Act which had brought the labor-management relationship in the Federal Government under statutory jurisdiction and taking it out of Executive order or policy-making or discretionary action by the Executive branch. In reviewing these sets of legal developments, we found that the most plausible arrangement would be to bear in mind the present status of these employees. If we are correct in our interpretation and the Panama Canal Zone is still the zone and not that special area which is made available to American authorities, then both the American nationals and so-called alien or non-U.S.-citizen employees come under Title VII of the Civil Service Reform Act. They are not now being handled by the Government in that capacity. We find that in this sense there is an oversight or a cultural lag or a legal lag in the handling of relationships of management and the Federal employees irrespective of their nationality in that area.

We have also taken into account that the remedies to the American national employees in the event they are displaced are to be supervised entirely and administered entirely by American authorities, U.S. authorities, and that the Panamanian authorities have no responsibilities toward American national employees.

In light of this, we were going to suggest for your consideration the following principles as to how they are quantified or incorporated into law, there is considerable latitude as to how one would do that.

The two principles are the following: First, that they be created in the Office of the Special Counsel of the Merit Systems Protection Board the requirement that all U.S. national employees have available to them directly protection of that Special Counsel to see that their rights to jobs in the United States if they are displaced be carried out and enforced.

We are concerned that we find in many cases statute exists that no one supervises it. There is no way to administer it. Inasmuch as it is American national employees who will be the ones who will be displaced, training replacements and Panamanian national employees are the ones who will be seeking to displace them, we felt that there needed to be a very clear commitment on the part of the Government that the facilities of the Special Counsel be available to them. That is part of our Annex 3.

We have outlined a suggested amendment which could be incorporated in any bill that you pass. It largely sees to it that they are afforded these protections.

On the matter of technique or mechanisms for procedures for labor-management relations, no matter who is the employer in this case, whether it is the Commission or the U.S. governmental authority, Department of Defense or any other U.S. governmental authority, we suggested that both American national employees and Panamanian national employees have identical rights vis-a-vis management, title VII, and in one version of our testimony we have no objection to it being done by Executive order for Panamanian nationals. However, on later deliberation, we considered that perhaps the simplest thing would be for your committee to recommend an amendment to the Civil Service Reform Act of 1978 to Public Law 95-454 to that section which states that labor-management relations will not be available to any alien or noncitizen of the United States which occupies a position outside of the United States.

We were suggesting for your consideration that one way to solve this problem of affording the rights to the Panamanian national vis-a-vis the management to be identical with the rights of Americans vis-a-vis management is to add a phrase that which reads like this, either this way or something similar: Excepting that any such alien or noncitizen of the United States serving in the area made available to the United States by the Republic of Panama under the Treaties of 1977 shall be considered, for purposes of this chapter, as if employed in a position not outside the United States.

That would mean that the issue as to what are the rights of the Panamanian employees vis-a-vis management would be resolved because they would be the same rights they have today.

As to whether or not they should be in the same unit, this is an issue of conflict of interest among employees, there are several techniques, and one of them is to be handled administratively, establish that you can only have people who are communities of interest, major communities of interest, who should be in the same units, and I would assume that where the board which would finally have to determine the propriety of these units would decide there is no community of interest, in certain cases and in other cases they might find there is a community of interest, there are no problems.

So that to summarize this statement, we feel that the treaties have created a serious problem, a problem which it did not anticipate. We found subjectively in discussions with some of the unions and some of the employees in Panama that the Panamanian national employees interpret the treaty or tend to interpret the treaty saying they should have the same rights that private enterprise employees have in the United States which is to bargain for wages and strike, if necessary, whereas the general understanding that we have, in light of the legislation that is now in the books, that is certainly the American national employees would not have those rights, and that the rights which now exist under title VII apply both to American nationals and to aliens, principally Panamanian national employees, which is the right as written in title VII of the Civil Service Reform Act that was passed last year by Congress.

Now, it is not our purpose at this point to go into the issue of the right to strike and the issue to bargain for full wages. We are members of the AFL-CIO. We are committed to that in the long range. We did want to point out in this Commission confronting you as legislators that we do not have that right now and a problem that has arisen under the treaty, a psychological problem is a matter of interpretation that there are many nationals who are not American citizens who construe the treaties to give them the same rights as private enterprise employees have because they construe the Commission to be a private corporation so far as labor-management relations go.

It is a difficult subject to discuss for which to devise a solution. Our own recommendation is that obviously all American national employees are entitled to title VII now and they will be entitled to title VII after the treaties come into force. It is our view that many Panamanian employees, they are entitled to provisions of title VII now and that they should by Executive order at least, and if you are so disposed in your wisdom to enact a statute to that effect, it will be continued to be entitled under implementing legislation to the same provisions of title VII under the labor-management relations, but neither bill before you takes that position. Both bills, H.R. 111 and 1726 deprive both the American, purportedly the Panamanian nationals of certain rights they now have. We are opposed to private Americans who work in Panama, those rights they would have in Germany or Japan or anywhere else—we are concerned that we do not appear to say that the Panamanians in dealing with management should have less rights than Americans.

With that I have sought to summarize a rather lengthy and complex statement. I do very honestly request that you look particularly at our argument in favor of Annex 3, which is to protect Americans in obtaining jobs here. We do that for two reasons. If they cannot get jobs here after being displaced in Panama, the only option they have is to retire. That will be one of the options to consider. I think the whole cost, this is of great interest to the issue of cost, the cost of the program, retirement program which I believe Chairman Cambioly [sic] estimates at $205 million, will be affected by the question as to whether or not these displaced Americans are able to obtain jobs in the United States. This I think is a matter on which you might wish to give some deliberation, and we would be very pleased to come back and cooperate with you in relationship between jobs in the United States and retirement as alternative options.

Mr. HUBBARD. Thank you.

Mr. Rogers?

Mr. ROGERS. He pretty well covered it, Mr. Chairman.

Mr. HUBBARD. If the amendment you suggest on page 15 is adopted, would the United States and the Panamanian nationals in the canal area be able to bargain in the same unit or would they still have to be in separate units?

Mr. KOCZAK. We believe that given the existing units and the determination which probably would be made by the Board that large numbers—there might be three types of units, some miqht be separate, some would be combined—this probably is the situation—there would probably be exclusively Panamanian and some exclusively United States and in some areas mixed units. It would determine really on the community of interest, and we should anticipate in advance on what board that would have to make a decision—well, I do not think we can say in advance, we are not trying to say whether you legislate in advance whether they should be in separate or in the same unit.

What we are saying is that the standard concept, standard principle of community interest versus conflict of interest should be criteria which would determine the nature of the unit. That is true even now in the United States. There are units which are not allowed to exist even under title VII. It is not a unique problem. It does not arise in Panama. It is a situation in the United States right now in labor-management relations.

Mr. HUBBARD. Do you support the request, made to the subcommittee by Panamanian employees who might immigrate to the United States, under the terms of implementing legislation, that they be allowed to compete for jobs in the Federal service?

Mr. KOCZAK. We think that that was one of the oversights in the treaty. Inasmuch as these persons were in American territory and if they are given the right to immigrate as a part of the treaty, it certainly appears that some kind of arrangement should be made that they can, if they are qualified, that they have the same right to compete as any other alien resident in the United States.

The issue is really very complex and it has been held by the Supreme Court that "Aliens * * * United States has the right to a

Federal job cannot be denied the right of employment by the Federal Government," and so on.

To the extent that persons feel that the territory of the Canal Zone was under American sovereignty and they were on American jurisdiction and born there in many cases, it would appear that they should certainly have at least the same rights as a person who has never or who had not been born in the United States, immigrated in the United States, who was an alien. I think they should have the same rights as any resident alien of the United States who was qualified and applies for a job.

Mr. HUBBARD. Congressman Carney.

Mr. CARNEY. Mr. Chairman, you covered the one question I was concerned about and that was Panamanians who are attempting to come to the United States. There were several Panamanians who work for the Canal Zone, who have expressed their desire to come here almost out of fright, I think, of going back into the Panamanian economy and some have concerns about their physical and mental well-being. I would have to say that I certainly share the same concerns that you expressed today, not only through American citizens and their ability to come back and find alternative employment, but for the Panamanians who so nobly served us as employees of the Panama Canal Company.

I think today is a time where we are changing our laws so we do not put people out to pasture. Unfortunately, some of the ramifications of the Panama Canal are going to prematurely put people out to pasture from the work force. I see you have that concern and I would like to express the fact that I am concerned as well. I think perhaps we could work to mend that problem that we have through legislation.

Thank you very much.

Mr. HUBBARD. Other questions?

Thank you very much, Mr. Koczak and Mr. Rogers.

I think the subcommittee shares your concerns.

Mr. KOCZAK. Thank you very much.

Mr. Blaylock, our president, is in St. Louis. He would have testified himself, but he was not in town.

Mr. HUBBARD. We appreciate your patience. We really intended to hear you earlier, but we had a Senator here and it took more time than we anticipated.

We again thank you.

Now, one last witness, John Washburn, former legal adviser in the Office of the Department of State.

Could you capsulize your comments with the understanding that your prepared statement will be in the record and knowing that time is a problem for some of us who have another hearing to attend at 1 o'clock.

Thank you, Mr. Washburn.

STATEMENT OF JOHN N. WASHBURN, ATTORNEY

Mr. WASHBURN. I certainly will do that on the understanding that the whole statement is to be in the record. I will be delighted just to summarize.

[The prepared statement follows:]

Prepared Statement of John Nelson Washburn

Chairman Murphy and Subcommitttee Members, I am John Nelson Washburn, a Washington-based international lawyer. From March 1958 to October 1966 I served as an attorney-adviser (international) in the Office of the Legal Adviser of the Department of State. Part of my service there was in the Office of the Assistant Legal Adviser for Treaty Affairs.

Due to accelerated weekend printing schedules the Panama Canal Treaties Hearings of both the Senate Armed Services Committee and Senate Foreign Relations Committee went to printer early in February 1978. As a result my statement of February 7, 1978 filed with the Senate Armed Services Committee was not included in its published Hearings nor, of course, was the "Afterword" of March 1, 1978, filed for record with it March 3, 1978. As for the Senate Foreign Relations Committee I concentrated not on a statement but on a series of letters to Chairman John Sparkman, pointing out many irregularities being overlooked by his Committee in connection with the role of Ambassador Sol M. Linowitz in the Panama Canal Treaties as negotiated. I challenged first Chairman Sparkman, beginning March 6, 1978, then Senate Majority Leader Robert C. Byrd, April 2, 1978, and even President Carter, in several letters the last one dated April 28, 1978, to prove me wrong and show me my suspicions were groundless. None of them could do so, and Senator Byrd did not even try. The May 3, 1978 White House response over Landon Kite's signature was in effect an acknowledgment.

Mr. Chairman, I respectfully request that the aforementioned Statement and "Afterword" as well as my letters dated March 6 and 23, and April 2 and 28, 1978 be put in the Subcommittee Hearing record at the end of my remarks.

I discuss therein an unkept promise and note that Panama Canal Treaty Implementing Legislation promised September 29, 1977 arrived March 3, 1978. The mischief pointed up in my Senate Armed Services Committee testimony and the April 28, 1978 letter to President Carter echoes your concern, Chairman Murphy, as I heard you express it Sunday evening, March 11, 1979, on the Mutual Radio Network program known as "Reporters Round-Up" on WTOP, that media accounts of negotiations of Panama Canal Treaties signed by President Carter September 7, 1977 had been orchestrated by the State Department to make them more palatable to the American people. Your Subcommittee now has the duty to set the record straight at long last, and I am very pleased to have the opportunity to help you do so here today.

In your "Reporters Round-Up" comments on the vital strategic nature of the geographical area involved in the implementing legislation under consideration by your Subcommittee, Chairman Murphy, you mentioned the Cuban Missile Crisis. I remember it well, Mr. Chairman, for I was then in Washington serving in the Office of the Assistant Legal Adviser for United Nations Affairs. In considering whether to make tighter or looser provisions on the Panama Canal Treaty Implementing Legislation, with a view to enhancing America's security needs, it is well to remember such crises and the nation responsible for creating the war scare. In that connection, the following description and appraisal of the Panama Canal in a book published in Moscow in 1978 by G. V. Vishnya, under the rubric of the U.S.S.R. Academy of Sciences, entitled "SShA-Latinskaya Amerika: Vneshne-politicheskie otnosheniya v sovremennykh usloviyakh, 1968–1976," (USA-Latin America: Foreign Policy Relationships under Contemporary Conditions, 1968–1976), might be worth noting: "* * * Panamskii kanal, yavlyayushchiisya strategicheskom klyuchom k Atlanticheskomu i Tikhomu Okeanam" (The Panama Canal, constituting the strategic key to the Atlantic and Pacific Oceans). I would hope, Mr. Chairman and Members of the Subcommittee, that in dealing with such a strategic key to two great oceans you exercise maximum vigilance to prevent any possible slippage in practical results from terms accepted solemnly back in the summer of 1977, when agreements in principle were transformed into commitments.

In order to counteract such slippage resulting in further burdens to the hard-pressed inflation-plagued American taxpayers, while seeking to enhance America's security needs in the Panama Canal area, as appropriate, I would make timely passage of Panama Canal Treaty Implementing Legislation a goal subordinate to careful formulation of effective Implementing Legislation. Pleas by Deputy Secretary of State Christopher and others for "sufficient lead time" in view of the October 1, 1979 entry into force date for the Panama Canal Treaties should not dissuade the Subcommittee from taking a long, hard look at every provision of the implementing legislation under its consideration until it is satisfied that the best elements have been found and applied correctly, after on-the-spot investigation in Panama when required.

A good scenario from the standpoint of protection of United States interests would be for this Subcommittee to adopt as the basis for Panama Canal Treaty Implementing Legislation Chairman Murphy's bill H.R. 111. Its best provisions, in my opinion, are those placing the Panama Canal Commission under the "Direction" of the Secretary of Defense, making the Panama Canal Commission an appropriated funds agency rather than a government corporation so as to dramatize inauguration of a new era under the closest possible Congressional scrutiny, and (as a rebuff to the Administration for its brazen violation of a 1972 Senate provision embodied in Section 501(c) of the Foreign Service Act of 1946, as amended, by lengthening the Sol M. Linowitz term for Panama Canal negotiations beyond the six month legal limit) requiring confirmation by the U.S. Senate of all Members of the governing Board (including the four Panamanians) of the Panama Canal Commission as well as requiring Senate confirmation of the Administrator and Deputy Administrator of the Panama Canal Commission.

Unless the Administration promptly withdraws its flimsy objections to those aspects of H.R. 111 singled out above and agrees to accept such increasingly popular provisions in lieu of its own as set forth in H.R. 1716, then it does not deserve to have Panama Canal Treaties enter into force, as scheduled, October 1, 1979.

[Note.—Accelerated printing of Armed Services Committee hearings of January 24, 31, February 1, 1978 caused omission of this statement in the published hearings but copy of statement was filed for record with the committee February 8.]

Statement of John Nelson Washburn, Ph. D., LL.B., of February 7, 1978

Chairman Stennis and Members of the Armed Services Committee of the United States Senate, I am John Nelson Washburn, a Washington-based international lawyer. I graduated from the University of Michigan Law School in 1957 and, from March 1958 to October 1966, served in the Office of the Legal Adviser of the Department of State U.S.A. as an attorney-adviser (international). Part of my service there was in the Office of the Assistant Legal Adviser for Treaty Affairs. Inasmuch as your Committee on January 31, 1978 heard, albeit inconclusively, from the Carter Administration's top international lawyer—State Department Legal Adviser Herbert J. Hansell—about reservations and amendments to the Panama Canal Treaties, and also heard from former Deputy Secretary of Defense Clements about a draft treaty provision (ensuring United States security interests in the canal) formulated by lawyers of Benjamin Forman's shop, I am taking the liberty of presenting for the record some points of my own not hitherto emphasized in connection with the ratification process and the negotiation process of these vital Panama Canal Treaties. In so doing, I respectfully request that my remarks be incorporated in an Appendix to your published record of the January 31–February 1, 1978 Armed Services Committee Public Hearings.

First, let me state that in my opinion the means being employed to the end of persuading the American public of the beneficial nature of the Panama Canal Treaties signed September 7, 1977 by President Carter are unworthy of a great, self-respecting nation. The impression is given that the regime of the canal is governed exclusively by a single treaty instrument which is obsolete. Thus, as Secretary of State Vance stated in Louisville, Kentucky on January 12, 1978 (Department of State Press Release No. 13 of January 12, 1978): "Each of the last four American Presidents has been convinced that the old Panama Canal treaty—negotiated in 1903—had outlived its usefulness." However, a look at the 1972 through 1977 editions of the State Department publication entitled Treaties in Force, in the section devoted to U.S.A.-Panama Bilateral Treaties and Other Agreements, discloses that the Isthmian canal convention signed at Washington November 18, 1903 has undergone changes pursuant to a General treaty of friendship and cooperation signed at Washington March 2, 1936 and a Treaty of mutual understanding and cooperation signed at Panama January 25, 1955. These two bilateral treaties were in fact cited in the Confidential January 10, 1966 State Dept. Memorandum initiated by Jack H. Vaughn and drafted by Andreas F. Lowenfeld constituting "Circular 175 Authorization to Negotiate New Treaty for Panama Canal", which on January 13, 1966 received Mr. T. C. Mann's approval. Inasmuch as this Vaughn to Mann Memorandum of January 10, 1966 proposed on the subject of defense of the Panama Canal a joint obligation provision similar to the one in the 1936 bilateral treaty, it is obvious that in his January 12, 1978 Louisville, Kentucky address devoted to the new Panama Canal Treaties Secretary Vance was utilizing a simplistic, if not dishonest approach.

Moreover, when Secretary Vance in concluding that January 12, 1978 address declares: "Because they are fair, because they serve our national interests, because they provide for our future, the treaties should be ratified by the Senate."—you, Senator Stennis, and Members of the Armed Services Committee, should be even more appalled. If the Secretary of State has not mastered yet the second paragraph of Article II, Section 2, of the United States Constitution ("He shall have Power, by and with advice and Consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. * * *"), he is unfit to hold that high office and President Carter should bring about his resignation before he demonstrates such imprecision in situations from which greater detriment to United States interests can ensue, as in negotiations with the U.S.S.R.

With respect to "imprecision," perhaps Secretary Vance and not State Department Legal adviser Hansell should be held responsible for failure to submit, as Mr. Hansell promised the Senate Foreign Relations Committee on September 29, 1977, the implementing legislation for the Panama Canal Treaties to the Congress, even three months late. As Senator McIntyre noted when Mr. Hansell was before your Committee January 31, 1978, the promise ("certainly well before the end of October") made with such assurance by Mr. Hansell (as set forth in the senate Foreign Relations Committee Panama Canal Treaties Hearings Part I at page 216) was hardly reassuring to those still seeking more facts on the treaties to be debated. Senator McIntyre's concern appeared even more substantiated when Mr. Hansell declined to give a new date for delivery of the important implementing legislation to the Congress. Was he unaware that President Carter's own transmittal message dated September 16, 1977 cautioned against "undue delay"?

Second, it should not be forgotton by Senators participating in the debate on these Panama Canal Treaties that, although the negotiations leading thereto have been long, excessively long in my opinion, the breakthrough came through action by Henry A. Kissinger which was soon challenged by senator Byrd of Virginia. To refresh your recollection, the memorable exchange on the subject of Panamian negotiations between Secretary of State Kissinger and Senator Harry F. Byrd, Jr. ocurred March 7, 1974 in the U.S. Senate Finance Committee Hearing in Room 2221 of the Dirken Senate Office Building. Taking exception to one statement made in Panama by Secretary Kissinger, Senator Byrd stated:

"Now you said this in your statement to the Panamanians that you commit the United States to prompt completion of negotiations leading to the transfer of sovereignty over the Canal Zone from the United States to Panama. I just want to get clear whether you can commit the United States to negotiations leading to giving up the Panama Canal in perpetuity.

In reply Secretary Kissinger stated:

"I can commit the United States to the negotiations. I cannot commit the United States without ratification by the Congress to the result."

What is important about this exhange, which I personally witnessed, is that Dr. Kissinger was then ignorant of the nature of the treaty ratification process in the United States of America, wherein the Senate gives advice and consent to ratification on the part of the United States and the President thereupon may proceed to ratify that treaty by means of the appropriate ratification instrument drawn up in the Department of State. Dr. Kissinger's ignorance of this process, or at least his inability to articulate it despite his vaunted eloquence, continued at least through August 20, 1976. That morning, on the NBC Today Show, when interviewed by Marilyn Berger in Kansas City, where the Republicans were in their conclave, Secretary Kissinger's defense of the Helsinki Accords of August 1, 1975 contained a reference to the 1946 Peace Treaties to which the United States was a Party "that were ratified by the United States Congress."

Eventually, on October 14, 1977, when former Secretary of State Kissinger appeared before the Senate Foreign Relations Committee on behalf of the Panama Canal Treaties along with former Secretary of State Rusk, he finally got it correct—not ratification by the Congress, but Senate advice and consent to ratification! Dean Rusk, an astute man and underrated Secretary of State, had probably clued in his more famous predecessor before Chairman Sparkman called the Committee to order that morning in Room 318 of the Russell Senate Office Building.

To recapitulate, for the American public to think of the Panama Canal Treaties as President Carter's treaties supported by former Secretary of State Kissinger can be misleading and I, for one, think of them more as Secretary Kissinger's treaties to which President Carter has lent his support and his prestige, perhaps to his own detrmiment should a Pyrrhic victory (a probability) or a defeat (a possibility) result in the Senate.

Third, and last, I believe that the status of Ambassadors Bunker and Linowitz as "conegotiators of the Panama Canal Treaties" should be clarified. At pages 27 and 28 of the Senate Foreign Relations Committee Panama Canal Treaties Hearings

Part I, there is the following exchange between Chairman Sparkman, Ambassador Linowitz and Ambassador Bunker, which occurred Monday morning, September 26, 1977:

The CHAIRMAN. You and Ambassador Bunker have worked together as our chief negotiators during the whole period of negotiation. Is that not right?

Ambassador LINOWITZ. Ambassador Bunker has been working on these treaties for a longer time. I joined him in February of this year.

The CHAIRMAN. You joined him about 6 months ago?

Ambassador LINOWITZ. About 7 or 8 months ago, yes, sir.

The CHAIRMAN. But during that time, have you worked in complete agreement?

Ambassador LINOWITZ. Absolutely, yes, I think. Ambassador Bunker?

Ambassador BUNKER. Yes; absolutely, Senator Sparkman.

This public show of total solidarity and harmony goes so far beyond mere bipartisanship as to be unpersuasive. It did not convince me because Ambassador Linowitz does three times more talking than does Ambassador Bunker in this scene, although Ambassador Linowitz had been serving on the team only since mid-February 1977, pursuant to being designated by President Carter on February 8, 1977 as a mere "part-time conegotiator" (Cf. Presidential Documents, Vol. 13, No. 7, p. 161). Was Ambassador Bunker reduced to the role of a "YES man" after February 8? It may be that style rather than substance has unduly preoccupied me in this matter, but nevertheless I would hope that somewhere in the Senate debate on the Panama Canal Treaties evidence reflecting reality as to the modus operandi of the negotiating twins is developed.

* * * * * * *

(Afterword of March 1, 1978 Filed for record with the committee March 3, 1978.)

Having read the complete Senate Foreign Relations Committee and Armed Services Committee Hearings on, respectively, the Panama Canal Treaties and Defense, Maintenance and Operation of the Panama Canal, including Administration and Government of the Canal Zone, I would like to reinforce the three points set forth above February 7, as submitted February 8, 1978.

If as conegotiator Linowitz told the Senate Foreign Relations Committee in his opening statement September 26, 1977 we the United States of America have been engaged in negotiating a new Panama Canal Treaty "for over 13 years now," then he should produce the State Department Circular 175 Authorization to Negotiate that new Panama Canal Treaty for it apparently was not the Circular 175 Authorization approved January 13, 1966. The U.S. Senate must not give advice and consent to ratification of Panama Canal Treaties unless negotiations therefor were properly authorized in the Department of State, and my point takes on added importance in the light of Senator Javits recollection on opening day September 26 that a U.S.-Panama treaty "in contemplation in 1967" had been rejected by Torrijos upon taking power in Panama.

As for sloppiness in characterizing the U.S. Senate's role in the treaty ratification process by equating advice and consent to ratification with ratification itself, it should be noted that this disease of imprecision has infected the President himself. Yes, in Nashua, New Hampshire February 18, 1978 he told his high school audience: "And I hope and I believe that the Senate in a great demonstration of patriotism and courage will ratify the Panama Canal Treaties." If this imprecision reigns in the land, how will proper attention be given to Senator Griffin's wise counsel expressed on the Senate floor at the outset of this Senatorial debate on the Panama Canal Treaties, namely, that the Senate give its advice and not its consent to ratification, with the advice being to put the negotiators back at the drawing boards?

My second point about these Panama Canal Treaties constituting, pursuant to the February 7, 1974 U.S.-Panama Joint Statement of Principles initialed by Secretary of State Kissinger and his Republic of Panama counterpart, Secretary Kissinger's treaties rather than President Carter's treaties finds support from Senator Goldwater January 31, 1978 in his colloquy with General Maxwell D. Taylor in the Senate Armed Services Committee Hearings referred to above, at page 219:

Senator GOLDWATER. As I told the President the first time I saw him after he signed it, I said: This is not your baby, you didn't even talk about it in your campaign. You had nothing to do with this thing so why push it with so much force and acceleration.

On my third point, about the nebulous status of Sol Linowitz as a Panama Canal Treaties conegotiator, first raised but not resolved definitively in the series of questions on status September 26, 1977 asked directly of him by Senator Griffin, I would repeat that according to Presidential Documents, Vol. 13, No. 7, p. 161, President Carter's designation of Ambassador Linowitz February 8, 1977 was as "part-time conegotiator." Yet even after the expiry of his commission, as in the joint Bunker-Linowitz appearances of September 26 and October 19, 1977 before the Senate Foreign Relations Committee, one finds that interventions by Ambassador Linowitz numbered 207, by my count of the text of the record of the Committee on the Panama Canal Treaties, whereas Ambassador Bunker had only 66. Who is the junior partner? And if the Linowitz ambassadorial status for Presidential purposes in connection with negotiation of the Panama Canal Treaties was for a 6-month term, which Ambassador Linowitz told the Senate foreign Relations Committee expired August 10, 1977, and there was no reappointment, according to Ambassador Linowitz, then by citing the official Presidential source could not expiration of the single 6-month term have come before the Parties reached agreement in principle in Panama on August 10, 1977? As I recall the course of the Senate debate on the Panama Canal Treaties, Senator Griffin first drew attention to completion of the negotiations on the "agreement in principle" on the last day of the tenure of Ambassador Linowitz as conegotiator, i.e., on August 10, after giving February 10 and not February 8 as the designation day.

Even if these three points I have raised and then reflected upon further are satisfactorily explained, I should like to make one final observation covering the style and not the substance of the negotiations of these Panama Canal Treaties currently under consideration. I recall Senator Goldwater's words in the Senate Armed Services Committee Hearings January 31, 1978, particularly these five sentences:

Senator GOLDWATER. I saw the treaty two days after the President and Torrijos signed it. I don't consider this the repudiation of the President. I think if anything it is the repudiation of the negotiators who did not do a good job in negotiating with the people that have to approve it; namely the Senate. * * * I don't want to see the President hurt in any case but I am afraid that if it is not approved that he is going to have to take some of the blame whether he likes it or not. I think the negotiators did a very bad job in explaining it to the people that they have to depend on to get this thing ratified.

In this connection, I also recall the words of a Secretary of State, John Foster Dulles, under whom I had the pleasure of serving. On April 6, 1953 in testimony before the U.S. Senate Committee on the Judiciary, he stated:

"The Constitution provides that the President shall have power to make treaties by and with the advice and consent of the Senate. This administration recognizes the significance of the word 'advice.' "

WASHINGTON, D.C., *March 6, 1978.*

JOHN SPARKMAN,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: Assistant Secretary of State for Congressional Affairs Douglas J. Bennet, in reply to my query of March 4, stated that late in the evening of Friday, March 3 provisions of implementing legislation for the Panama Canal Treaties were delivered to certain Senators and that those provisions would be printed today in the Congressional Record. You will recall that State Department Legal Adviser, Herbert J. Hansell promised the Senate Foreign Relations Committee on September 29, 1977 that "a complete draft" would be "available for submission to both Houses within several weeks" and "certainly well before the end of October," and, a few minutes after replying to your question as to when that proposed legislation would be submitted to Congress, Mr. Hansell reassured Senator Case and the entire Committee that work on the implementing legislation by his team of specialists would be kept moving at "white heat" pace.

The slippage of some four months in the Hansell timetable, which even at the roughly three month mark had irked six members (McIntyre, Byrd, Helms, Goldwater, Thurmond and Bartlett) of the Senate Armed Services Committee during Hearings held January 31 and February 1, 1978, recalls the headline on and across page 3 of The New York Times of February 14, 1977: "Panama Canal Talks Resuming Today, With Both Sides Hoping for New Treaty by June." Agreement came August 10.

In this connection, I respectfully request that either you or Subcommittee Chairman Sarbanes with the aid of Mr. Dockery do investigate in a no-nonsense manner what heretofore has been a mere concern of one member of your Committee, Senator Griffin, and not a matter of illegal action. I refer to the role of Ambassador Sol M. Linowitz in the Panama Canal Treaties as negotiated. Senator Griffin expressed concern about the Linowitz role not only in Committee September 26, 1977, posing a series of status questions to Mr. Linowitz himself, and in Part XIII of the Committee's Report of February 3, 1978 on the Panama Canal Treaties, but also in the course of the beginning phase of Senate debate on those Treaties (see Congressional Record of February 6 at page S1259 and of February 8 at page S1534). In all four instances when Senator Griffin expressed such concern, he stated (three times very explicitly, once by clear implication) that Mr. Linowitz "was appointed on February 10, 1977" and that President Carter had "named" him to be a negotiator "On February 10, 1977," and this "for a six month period."

I submit that President Carter designated Mr. Linowitz to be, as the White House Press Release of February 8 indicates, both in its original form and as printed in the Weekly Compilation of Presidential Documents, Vol. 13, No. 7, page 161, conegotiator "today", i.e. February 8, 1977. Under the law, Sec. 501(c) of the Foreign Service Act of 1946, as amended, such a Presidential special mission appointment may not exceed six months. Senator Sparkman, you as one Senate conferee for what became P.L. 92-352 which added Sec. 501(c) are particularly well qualified to honor my investigation request as appropriate in the light of Senator Griffin's Minority Views and related items attached.

Sincerely,

JOHN NELSON WASHBURN.

WASHINGTON, D.C., *March 23, 1978.*

JOHN SPARKMAN,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: After contemplating at greater length your March 14, 1978 letter to me on the aforementioned subject covered by Section 501(c) of the Foreign Service Act of 1946, as amended, I must bring to your attention two additional concerns not mentioned in my letter to you dated Monday, March 20, 1978. These two concerns relate, respectively, to the second and third sentences in your March 14 letter's second paragraph, sentences reading as follows:

" * * * Therefore, he was legally entitled to sign the Panama Canal agreements on August 10, 1977. From that date on he has acted as a consultant to the Department of State without the special title of Ambassador."

The trouble I have with the first of these two sentences explaining what your Senate Foreign Relations Committee records show is that you imply that Presidential special representative Ambassador Linowitz signed "Panama Canal agreements on August 10, 1977." Having checked on Tuesday and Wednesday, March 21 and 22, 1978 with both the Office of the Assistant Legal Adviser for Inter-American Affairs in the Department of State and the Embassy of the Republic of Panama in Washington after reviewing applicable State Department documentation and items in the Weekly Compilation of Presidential Documents for the Week Ending Friday, August 12, 1977, plus pertinent accounts in The New York Times for August 11 and 12, 1977, I maintain that Ambassador Linowitz signed nothing on August 10, 1977, for what was reached on that date was not "agreements" as you state but, in Ambassador Bunker's words, August 10, in Panama, "agreement in principle on the basic elements of a new treaty—and a new relationship between our countries. Our legal specialists will continue working to express promptly those elements in formal treaties."

The trouble I have with the second of these two explanatory sentences is that you claim for Mr. Linowitz at the State Department a "consultant" role "From that date on", i.e. August 10, 1977. Do you mean to tell me that on Thursday, August 11, 1977, while en route by air from Panama in an Air Force jet arriving at Andrews Air Force Base near Washington just after 2:30 P.M., or enroute from Andrews to the White House by helicopter, or while closeted with the President of the United States at the White House for the next ninety minutes, or even in the short interval remaining before the close of business that Thursday, Mr. Linowitz became officially a Department of State "Consultant", as that term is defined and provided for in 5 U.S.C. 3109 together with other appropriate legislative provisions and applicable regulations? I doubt such continuity was maintained. Please check this.

Sincerely,

JOHN NELSON WASHBURN.

WASHINGTON, D.C., *April 2, 1978.*

Senator ROBERT C. BYRD,
Senate Majority Leader, Capitol Hill,
Washington, D.C.

DEAR SENATOR BYRD: Two weeks ago today, on the CBS News Face the Nation program, questions on the Senate approval of the Panama Canal Neutrality Treaty by the panel centered by George Herman brought forth from you a strong answer that no deals for votes had come to your attention and that any such loose "innuendo" talk deserves a "spit-in-the-face" rebuff from individual U.S. Senators involved.

I also feel strongly about the Senate's advice and consent role with respect to the two Panama Canal Treaties. My letters (the first two of which were dated and delivered by hand March 6, 1978) addressed to U.S. Senate Foreign Relations Committee Chairman John Sparkman in re Panama Canal Treaties; "Full Powers"/Linowitz produced an answering letter dated March 14, 1978 (copy enclosed) in which, in the second paragraph, Senator Sparkman states that Foreign Relations Committee records show President Carter's actual appointment of special representative Linowitz as being dated February 10, 1977 and, in accordance with Sec. 501(c) of the Foreign Service Act of 1946, as amended, terminated August 10, 1977, so that "From that date on he has acted as a consultant to the Department of State without the special title of Ambassador."

Imagine my surprise, after a visit March 23, 1977 to the State Department's seventh floor, where information that confirmed albeit without dates the current consultant status of Mr. Linowitz in S/AB, i.e. Ambassador at Large Bunker's shop, and service there without compensation, to receive from U.S. Senate Foreign Relations Committee staffer Robert Barton March 24, a note dated March 23, 1978 (copy enclosed) enclosing pages from the March 22, 1978 Congressional Record including page S4334 (copy enclosed) on which is a March 7, 1977 State Department letter to the Senate Foreign Relations Committee Chairman read into the Record by your colleague Senator Sarbanes. Its second paragraph states that along with the February 10, 1977 Presidential appointment of Mr. Linowitz there was, simultaneously, State Department appointment of Linowitz as a "Special Government Employee." Inasmuch as "consultant" and "Special Government Employee" are not, under applicable regulations, the same, and are subject, like the aforementioned Sec. 501(c) to a cut-off date, please provide me with clarification on this point, and please tell me by what authority Mr. Linowitz negotiated (see enclosed page 467 of Panama Canal Treaties, Foreign Relations Committee Hearings, Part I) the October 14, 1977 Carter-Torrijos Joint Statement of Understanding.

Sincerely,

JOHN NELSON WASHBURN.

WASHINGTON, D.C., *Friday, April 28, 1978.*

The PRESIDENT OF THE UNITED STATES,
The White House,
Washington, D.C.

DEAR PRESIDENT CARTER: In this my final communication to you about the Panama Canal Treaties I ask you not to proceed to ratify them unless you are absolutely sure, despite Senate advice and consent to ratification, that a 1972 Senate provision embodied in Section 501(c) of the Foreign Service Act of 1946, as amended, was not violated in negotiations:

DESIGNATION OF LINOWITZ

February 8, 1977: The President today designated Ambassador Sol M. Linowitz to be part-time conegotiator of the Panama Canal negotiations. Ambassador Linowitz will join Ambassador at Large Ellsworth Bunker in heading the U.S. negotiating team. He will serve as Special Representative of the President with the personal rank of Ambassador.

(Applicable legal provision setting limit of 6 months:)

Appointments

SEC. 501. (a) The President shall, by and with the advice and consent of the Senate, appoint ambassadors and ministers, including career ambassadors and career ministers.

(b) The President may, in his discretion, assign any Foreign Service officer to serve as minister president, chargé d'affaires, commissioner, or diplomatic agent for such period as the public interest may require.

(c) On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2, of article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months.

(Monday Sept. 26, 1977—Linowitz acknowledges 6 months mission limit:)

Mr. Linowitz' status

Mr. Linowitz, for the record let's clarify your status. You were appointed, as I understand it, for a 6-month term as negotiator with the rank of Ambassador.

Ambassador LINOWITZ. Yes, sir.

Senator GRIFFIN. That 6-month term expired in August?

Ambassador LINOWITZ. August 10.

Senator GRIFFIN. Were you reappointed?

Ambassador LINOWITZ. No, sir.

Senator GRIFFIN. So you appear now in a private capacity rather than as an officer of the United States.

Ambassador LINOWITZ. Yes, sir, although I still serve as adviser to the delegation.

Senator GRIFFIN. The appointment as negotiator for only a 6-month period did not require confirmation by the Senate. Is that correct?

Ambassador LINOWITZ. That's right, sir.

(Wednesday Oct. 19, 1977—Linowitz admits Oct. 14 role as President's negotiator of Oct. 14 Neutrality Treaty—Carter-Torrijos Joint Statement of understanding:)

Ambassador Escobar's agreement with statement

In summary, it simply reiterates and confirms the Torrijos statement. In fact, he literally reads it in his press conference.

So, I think there is little doubt that at least Mr. Escobar agrees with the interpretation and the statement that was issued here on Friday.

Ambassador LINOWITZ. Senator, may I interject a comment on that?

Senator CLARK. Yes please.

Ambassador LINOWITZ. Ambassador Escobar actually negotiated the statement on behalf of Panama. He was here and he and I actually worked out the exact wording.

Senator CLARK. I see. I didn't understand that. Thank you.

JOHN N. WASHBURN.

THE WHITE HOUSE,
Washington, May 3, 1978.

DEAR DR. WASHBURN: I am responding to your recent letter to President Carter. Your expression of concern is appreciated and the President thanks you for writing.

Sincerely,

LANDON KITE, *Staff Assistant.*

Mr. WASHBURN. I am very pleased to be here particularly when the Senator Gravel was also here, because last year, that is, from September 1977 on through the summer, I was in the position of Representative Carney trying to pin down some of the Senators. It may be reflected in some of the items that I have put in the record here with my statement.

I have had the interesting experience of trying to buttonhole Senator Church, giving him a statement and saying: "This is very important, sir;" and then seeing him a second time and saying: "Did you agree that it was important, and something that should be looked into with somber realism, sir?" His reply: "No, I gave it to my assistant." And so it disappears.

It is very, very hard to pin down Senator Church.

So I appreciate very much what Representative Carney was trying to do. That is why I would suggest, and the import of my remarks is just that, that you have a situation here where there are lots of irregularities and lots of loose ends, and they were never tied together very well. Particularly as Senator Gravel was speaking of the Senate Foreign Relations Committee Panama Canal Treaties hearings—if he had only been to the Senate Armed Services Committee hearings, he would have gotten answers. So Mr. Carney would have won his debate, if Senator Gravel had been at those hearings. They did not get as much attention, but Democrats and Republicans alike asked penetrating questions of the State Department and the DOD witnesses, whereas in the Foreign Relations Committee hearings very easy questioning took place.

If I understood Congressman Murphy's statement over the radio that I heard Sunday night, reporting back on what you gentlemen had accomplished in Panama, I think, to repeat it, that the more questions asked, the more sense of just being a little bit skeptical, let us say, is important, and going on to get precise facts, and specific statements for the record is very, very essential.

Shifting from my role as attorney to one as a Soviet affairs specialist, I put in the record specifically a statement from a recent Soviet text just to show what Soviets think about such a strategic key as Panama Canal. And so you have a heightened duty to do your very, very best, realizing that senatorial action with respect to these two treaties are full of little, let's say, obscure areas that need more probing.

Again, on the general strategic plane, it is very essential that we know the Soviets have interest in this particular area, and I have said so in print. It is stated in the U.S.S.R. Academy of Sciences publication that the Panama Canal is a strategic key to both the Pacific and Atlantic Oceans.

One last point. Legal Adviser Hansell—and I used to work in the Office of Legal Adviser—on September 29, 1977, made a promise to Senators, the Foreign Relations Committee, yes, sir, I will have implementing legislation up to you by the end of October 1977 for sure. And then it was March 3, 1978, before even the first draft of the implementing legislation reached—reached not the Senate, but only certain key Senators.

One sees that either they did not comprehend completely what implementing legislation was in the Office of Legal Adviser Hansell or they were making a promise they did not intend to keep. But at those Armed Services Committee hearings, Senator McIntyre and Senator Byrd of Virginia and Senator Helms said: You promised us the implementing legislation and we would like a peek at it before we question you further. In other words, before you in this subcommittee start at the job of working on implementing legislation, you should know it had a history in the Senate Armed Services Committee in particular. That concludes my summary of those two points.

Therefore, I am hoping that you are careful to retain a provision of advice and consent of the Senate to appointments and that this be made in the language of H.R. 111, that you stick to that language despite concerns of the Department of State and others that maybe we should not have Senate advice and consent to certain appointments, for the Board and others.

I would urge strongly that one stick to this safeguard, having seen what happened with Sol Linowitz in negotiating of those Panama Canal Treaties.

Thank you very much, sir

Mr. HUBBARD. The main thrust of your testimony is to advise us to take a good long look at implementing legislation?

Mr. WASHBURN. Yes, sir, exactly.

Mr. HUBBARD. Would this possibly, however, jeopardize the interest of the United States if implementing legislation were postponed by a long look?

Mr. WASHBURN. I would not want you to postpone it. I just want you to do an extra good job safeguarding this country's interest, knowing that there was a little bit of shortcutting in the process of advice and consent to ratification.

Mr. HUBBARD. Good answer.

Congressman Carney.

Mr. CARNEY. Yes.

Mr. Washburn, I would just like to say that the Comptroller General of the United States before the Senate Armed Services Committee said that: "If I was a Senator, I would not vote on the treaty until I saw implementing legislation." It is unfortunate that 67 Senators did not take his advice at this point. But that is water under the bridge.

Now the responsibility for the implementation of the treaty falls upon the House, and I think we are compelled to do the best we can, and certainly I am going to look with great concern over your testimony.

I have one question that you might be in a position to at least give me some thoughts on.

I question whether the Panamanian treaty had been ratified properly. I note you are an international lawyer with international background.

Have you done any studying into the implementation of the treaty from the Panamanian side, not the American side?

Mr. WASHBURN. No. Interestingly enough, that was one that got legal advisor Herbert Hansell in deep trouble before the Armed Services Committee. He said I understand Panamanian law. I shall say, I am ignorant of it. He said, I understand it. Then a very intelligent Senator, maybe one of the smartest, Sam Nunn of Georgia, asked one question he could cope with but the second one floored him and had him saying: I shall have to look at the law before question No. 2. I will have to say I am ignorant of that Panamanian side. Unfortunately, I do not know anything about it. I do not have enough intelligence, I suppose.

Mr. CARNEY. I have to admire your frankness. I would hope I would have the opportunity to speak with members of the international legal community that would have expertise on Panamanian Government.

I think there are questions as to whether the treaty has been ratified properly.

I would ask another question. This has to do with international law. I believe it is from the Geneva Convention, 1967, I believe, where they state that no international treaty can be made under threat. It is section 82. I forget which Geneva Convention it is. I am not prepared, I am sorry. But international law says that no treaty between two nations can——

Mr. WASHBURN. There is a general principle of coercion.

Mr. CARNEY [continuing]. Under threat.

Would you consider the actions of General Torrijos during the period the Senate was deliberating over the canal, when he said if you do not give us the treaty we will come and take the canal, a threat?

Mr. WASHBURN. Again, excuse my ignorance of this Torrijos situation. I do know that when you have a totally one-sided treaty—well, offhand, off the top of my head, I do not think this would be quite in the category suggested. Maybe that is because I have not looked at the coercion point recently. There is of course the one-sided treaty forced by duress; but I do not think this would qualify. I really do not. I do not think this would be of such magnitude so as to consitute anything that would make it applicable to the general principle. I must say that I cannot pinpoint the Geneva convention you are talking about either. Anyway I think one ought to let this one go.

Mr. CARNEY. I think we agree just how much he really could threaten us.

It was just a point I thought I would bring up. I certainly appreciate you coming here.

I would just like to say I thought I won the argument with the Senator today.

Mr. WASHBURN. I'm sure you did. In my mind, you did.

Mr. HUBBARD. Thank you. If we have that on tape, you could get reelected easily.

Mr. Washburn, thank you for being with us and to each of you in the room who have been here day after day taking notes and listening, we thank you for your patience in being with us. After 9 days of hearings and about 50 witnesses and 52 hours, these hearings do now come to a close.

Mr. CARNEY. If I just might say, Mr. Chairman, I would just like to take a moment from the side of the minority and I would just like to praise the chairman for the way these hearings were conducted. I know I am echoing the sentiments of all the minority members of the committee and I dare say I am echoing the sentiments of the majority members too.

The chairman of the committee certainly deserves appreciation of the people of the United States, particularly the people who are involved in these hearings. As he said, there were 52 hours of long hard hearings, but they were conducted in a fashion that I think did a great service to the Members of the House of Representatives and the people of the United States.

Thank you.

Mr. HUBBARD. Thank you.

The meeting is adjourned.

[Whereupon, at 1:01 p.m. the subcommittee adjourned.]

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